Harbour and also in the larger interests of the large number of people who will be benefited by the labour that will flow from it.

Mr. T. Narayana Menon *(Conservator of Forests):* With regard to one point raised by my Hon'ble friend Mr. Ikkanda Warriar regarding the effect of the denudation of forests upon rainfall, I may be allowed to make a few remarks. To start with, the question of rainfall does not arise here, because by the opening of the road we are not going to completely denude the forest growth on the areas affected. With regard to this particular area I may mention that the apprehension of the Hon'ble Member Mr. Warriar is not well-founded, because, after all, in this scheme the area that is going to be converted for paddy cultivation (which will be a comparatively small area of one thousand acres) alone have to be completely denuded and that small area is by the side of the river. The bulk of the area which is going to be converted into plantation is to be devoted for cultivation of rubber, tea, cardamom, etc. As Mr. Mathai explained to you, in these areas there is no question of complete cutting and removal of all the trees. Only a few trees here and there would be cut off in the case of cardamom. Even where the forests are removed for tea planting the growth will be substituted by tea bushes. In the case of rubber there is only a substitution of trees. That is to say we would not completely denude the forests of all their vegetation. I do not, therefore, think that there is much room for apprehension on that particular score.

Mr. President: The discussion on this motion will continue to-morrow.

The House adjourned for lunch at 1-10 p.m. and re-assembled at 2-30 p.m. with M.R.Ry. K. Ayyappan Avl., Deputy President, in the Chair.

LEGISLATIVE BUSINESS

The Cochin Income-tax Bill

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Mr. President, Sir, I have great pleasure in presenting the report of the Select Committee on the Cochin Income-tax Bill. As the report shows there have been very few modifications in it and the Bill as emerged from the Select Committee is substantially in the same form as the original one. The dissenting notes are by two members, one from Mr. Govinda Pai and the other from Mr. C. R. Iyyunni. They have made their points very clear in their dissenting notes. I have no observation to make on these matters. I beg to move that

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the Bill as reported by the Select Committee† be taken up for consideration.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, before I move the amendments seriatim, I would place before this House the scope of these amendments, because the number of amendments is sufficiently big. They fall into three groups—one under which we fix the rates in the schedule. Our original idea was to leave it for separate legislation. But on subsequent consideration we thought that these rates might be incorporated in this legislation and that it would be a cumbersome method to bring a separate legislation for that. There are a number of amendments giving effect to these rates.

The second group consists of certain amendments which we have tabled with the intention of bringing this Act into force in this year itself. The Act as modified by the Select Committee and as presented to the Select Committee was to come into operation only in 1118. We feel, for reasons which I shall explain, that the Act should come into operation from 1117 itself which means that we have to make changes regarding the years in some sections.

Then coming to the third group it consists of amendments made to the British Indian Act which we propose to incorporate in the Bill here. Since the Select Committee considered it, there has been a legislation passed in British India and there have been amendments also made in the Indian Income-tax Act. We have sought to incorporate some of these later amendments in this Bill. These are the three groups under which these amendments come.

*Mr. C. R. Iyyunni *(Trichur-South):* May I ask whether there is any essential distinction between the basis of the scheme involved in the Bill that was presented by the Government and the basis of the amendments that are proposed to be introduced? There, it was so clearly stated that the basis of the Bill was the accrual one. Now even that very basis has been taken away from the Bill, owing to the amendments that have been tabled by the Government.

Secondly, one of the important points raised by the Select Committee and in the Council was that the Bill should come into operation only from next year onwards. With regard to that matter also there is an essential change. The Bill as altered by the amendments that are going to be presented by the Government will

†Appendix IV.

*Speech not corrected by the hon'ble member

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certainly make such vast changes as are not even thought of by the Select Committee. Under such circumstances, I do not think it will be proper to have the amendments taken up one by one seriatim. Because the Bill as was presented by the Select Committee is entirely different from the amendments that are presented by the Government. Then the third point was, at that time it was not in the contemplation either of the Council or of the Select Committee to bring in the schedule of rates. Now in this Bill itself the amendments will show that that is also brought in. Taking all these things into consideration, certainly one has to take it that the Bill in its altered form will be entirely different from the Bill that was brought into the Council and which was passed by the Select Committee after consideration. There appears to be such a substantial alteration, both in the Bill introduced before and the amendments that are sought to be made in it now.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* If the Hon'ble Member had waited for a few minutes, I would have given the reasons for the changes. In fact I was just entering into that point.

Mr. C. R. Iyyunni *(Trichur-South):* This is simply to give you a handle to explain things more properly.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Even without that handle I was about to come to that point. As I stated, the amendments fall into three groups.

I classified the amendments under the various groups and pointed out the operation of each group. I am taking up that procedure because it will save the necessity of elaborate discussion at each stage of the amendment. The first group relates to amendments Nos. 3, 30 and 39, that is with respect to the rates to be fixed in that schedule. They, I submit, are innocuous amendments. Instead of a separate piece of legislation it is proposed to incorporate these amendments in this Act itself so that if the Council agrees with me for the immediate operation of this Act, we need not be in want of that schedule.

Mr. C. R. Iyyunni *(Trichur-South):* There must be some reason at the time when the original Bill was introduced to suppose that there should be two separate Acts. May I know what exactly was the reason that induced the Government to bring in these amendments now?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* There must be some point in the objection. May I know what harm is done if the rates are now introduced. Our original difficulty was we were not ready with the rates. So we said we would wait for a

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separate legislation. What is the point in objecting to that here? Upon the merits there is no objection.

Mr. C. R. Iyyunni *(Trichur-South):* My point is, the Select Committee had not the advantage of going through the rates. If, as a matter of fact the rates were also incorporated in the Bill, we could have gone into that matter in detail and we could have expressed our views properly. That makes the whole difference.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* The rates form only a schedule that is sought to be introduced by the amendments. Some rates are necessary. I suppose that is clear. Our original idea was to have it by a separate legislation, because we were not ready with the rates in the form of a schedule. I submit that the proper form is to have the rates in the schedule. Unless therefore it is intended to shunt on the operation of this Act to next year, the schedule must be there. The amendments with respect to rates are Nos. 3, 30 and 39. The only point of departure was, instead of a separate Act we have incorporated it in the form of a schedule.

The second group relates to the bringing of the Act operation into this year itself. In this connection I may say that our original idea was that this legislation should come into force from 1117 and the Bill as drafted was to make it operative in 1117. It was then thought that it could be passed in the Budget Session, but it could not be. Hence the select committee changed it into "1118".

Mr. C. R. Iyyunni *(Trichur-South):* And not a voice of protest was heard from the Government members also!

Rao Sahib K. Achyuta Menon *(Secretary to Government):* But events have happened that made it necessary to bring that Act into operation this year itself. The Excess Profits Tax Act has been introduced here since then. That Act makes it imperative that this should come into force in 1117. The people who will be affected by the Excess Profits Tax Act are of course fairly interested to see that this Act does not come into force in 1117. If the Excess Profits Tax Act is to come into force in 1117 itself then this Bill also has to come into force this year itself.

Mr. A. B. Salem *(Mattancheri):* Has not that Act come into force already?

Mr. M. Sivarama Menon *(Advocate-General):* We want to work it out.

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Mr. A. B. Salem *(Mattancheri):* Then why should you make this Act binding with the Excess Profits Tax Act?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Because we wanted to tax the income of the previous year. We passed the Excess Profits Tax Act, because if it had been brought into this House, that income would have escaped. In fact there was no idea of not bringing it into this House at all. Suppose we took the normal procedure, then we could not have got the income this year—this war period.

Mr. C. R. Iyyunni *(Trichur-South):* You cannot raise that argument. When once you pass the Excess Profits Tax Act without the knowledge of this House you cannot now come here and say, "because that Act is in force, this also should come into force this year itself". That kind of argument is not quite proper. On the other hand, if the Excess Profits Tax Act was got passed by this House, and the rates in that Act depended on the rates fixed in this Act, then that would have been a sound argument.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I am willing to take the considered vote of this House. But I am for the moment explaining my amendments. I am not apprehensive of the results of my amendments at all. For the present I am only saying what my amendments are just to avoid speeches with regard to each and every amendment later on. I am perfectly confident that this House will agree that after all the Excess Profits Tax Act has to be levied on incomes earned during the war period. I am sure all will agree that this Act should come into force in 1117 despite the opposition of the people who will be affected by the Excess Profits Tax Act. I am only cataloguing my amendments. For the present I leave it to the sense of this House whether we should not tax excess profits, or profits earned because of adventitious circumstances and situations. If incomes of that sort have to be taxed, then it is also a matter that this Act should come into force this year itself. The insuperable difficulty was if we introduce the Excess Profits Tax Act, it will have to go through all the stages in this House and much time would have lost. So much so, we would have lost the opportunity of taxing the incomes in the year 1117. Those incomes would have escaped. It is our duty to tap all the justifiable sources of income for governmental revenues and it is because of that the Act took that form of procedure. Otherwise, that accounting year would have gone and that income would have escaped taxation. That was the reason why the Excess Profits Tax Act was promulgated in that form. If the Act itself is beneficial, then the objection is only to one of form. If the Excess

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Profits Tax Act is a justifiable piece of legislation and it has a beneficial effect upon the coffers of the State, then the hon'ble member's objection is only an objection of form, intended mainly to preserve the rights of this House. We have innumerable instances of beneficial legislations being passed without those Acts being placed here. In fact there have been invitations in this House that legislations should be passed by Proclamation, if they will benefit the people at large. If it is a good piece of legislation the fact that it came through the other way should not stand against the Bill.

Here the Excess Profits Tax Act is intimately connected with this Income-tax Bill, that it makes necessary that this Act also should come into force in 1117. Otherwise, there will be some technical difficulty. Because there will be two standards of income.

Mr. Ismail Hajee Essa Sait *(Mattancheri):* When was the Excess Profits Tax Act passed in British India ?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I am not perfectly ready with the date on which it was passed. That Act has been passed there, and there they caught the people who should be taxed. Our attempt is also to catch the people with surplus income. This legislation should come into operation in 1117 because the standard income in respect of which the excess profit is calculated will be the standard income prescribed by this piece of legislation. Therefore, in order to avoid all these complications, we propose to introduce these provisions in the Income-tax Bill now before the Council. These are the two main points.

Then, with respect to the third group, *i.e.*, incorporating the later amendments in the British Act, the amendments which came into force under Act, XXIII of 1941, those amendments are intended to grant concessions to the assessees. I think there can be no objection to that. Those amendments are mainly intended to give concessions to the assessees. Unless therefore you are against granting such concessions, there is no point in saying "you have adopted certain amendments which were not before the Select Committee". Therefore in making these amendments Government were attempting to make certain changes in the matter of calculating deductible allowances.

Of course, I recognise the main argument that the basis of taxation with respect to income in British India has been changed from one of remittance to that of accrual. The original proposal was to tax income on remittance basis. We have now changed it into one of accrual. Even there one of my important amendments

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was not read. In clause 17 (2) we propose to introduce a provision, namely, "in respect of any income, profits or gains accruing or arising within British India or an Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into Cochin in the previous year" are assessable. Therefore in this particular section we exempt the income earned in British India or other Indian State to be charged according to the accrual basis. I think it is ignoring that amendment that the whole objection has been taken that we have changed the basis of taxation. What happened was, in British India, after protracted negotiations with Indian States on either side, they added a uniform standard with respect to taxability and they fixed upon accrual as the basis of taxation. Now we follow the same principle. For the purpose of reciprocity I submit it is highly essential that we should have only one basis of taxation, and this is intended to benefit not the Government but the assessees themselves. If it is stated that the present basis would not apply to them, we would have got more. Under section 17 (*c*) unless the income earned in British India or other Indian State is brought into Cochin State, they do not become assessable. These are the main facts relating to this point.

Mr. C. R. Iyyunni *(Trichur-South):* Does it mean that the Government do not want to collect more revenue, when there is a chance for it?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* The point which you raised that the basis has been changed is devoid of any substance. Because what happens is for the purpose of calculating world income, this accrual basis is adopted. In the case of income arising in British India or any other Native State it will be taxed only if it is brought here. Taking something from people who can afford to lose something is not a crime at all. *(Laughter).* Directly it may not concern anybody. Moreover this sort of people will be very few, I mean people who have world income apart from British India and Cochin State. Therefore I submit there is nothing formidable in these amendments.

Now I move the first amendment.

Clause 3

In clause 3—

(*a*) in sub-clause (6) (*d*) substitute the figures "1111" for the figures "1112", and

(*b*) in sub-clause (9) substitute the words "mutual insurance association" for the words "mutual insurance company".

"1111" has automatically to be substituted for "1112", because the Act is to come into force in 1117 instead of 1118.

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Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Mr. A. V. Moothedan *(Chalakkudi):* Sir, on this first motion, I am sorry I have to oppose. It is a taxing measure and we should not give retrospective effect for taxing measures like this. It is on that principle that I oppose this measure. The Act now in force is Act VIII of 1108. There the provision is: "This Act will come into force on the first day of Chingam 1109." His Highness, in fact, gave assent to it on the 24th Meenam 1108 itself. Section IV in that Act says "Income-tax shall be charged for the year beginning from the 1st day of Chigam 1109". That means the Act affects only to incomes arising in future. The amendments now tabled by Government, if accepted, would result in the operation of this Act from 1st Chingam 1116. People will have to pay Income-tax for 1116. That is, there will be retrospective effect for two years. I think, therefore, on general principles this amendment is not acceptable. Therefore I oppose this motion.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I think the hon'ble member is under a misapprehension, when he refers to the introduction of the Income-tax Act for the first time in this State. Then it was thought that that being a new taxation at least one year's time should be given so that the people may be prepared with their accounts. But here there is already income-tax imposed on incomes of 1116. The only difference is that the rate is changed. Here Government say that extra-ordinary incomes earned during war may also be charged to extra profits tax. That is all the effect of this Act. It comes into force in 1117. When it comes into force the operation is from the previous year. That is the economic principle. What happens is, when we put it that the Act should come into force in 1118, the incomes that could be charged under the Act should necessarily be on the incomes earned in 1117 so that on an economic principle it is the income of the previous year that is charged. In this aspect of the matter there is no retrospective effect at all, since we are in the year 1117 and we propose only to bring it into force from this year only.

Mr. A. V. Moothedan *(Chalakkudi):* The effect of this legislation is that incomes of the year 1116 will be subject to this legislation.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Yes. The excess profits earned in 1116, that is during war time, will be taxed according to this legislation. Are you objecting to that? Then state that plainly.

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Mr. A. V. Moothedan *(Chalakkudi):* We are not concerned with the Excess Profits Tax Act. We are only concerned with these amendments.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Even under the existing Act the incomes of 1116 are chargeable. The only point is with respect to the excess profits earned. Should we tax them or not, that is the question.

Mr. T. P. Poulose *(Kanayannur):* On a point of information, will this Act apply to all cases of income where income-tax is leviable under the existing Act?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Yes, it will.

Mr. T. P. Poulose *(Kanayannur) :* I seek this point just to understand what the effect of this Act will be. In a case where a man has been assessed to tax, even though he will not be liable to pay excess profits tax, will he be assessed according to the rates as contemplated by these amendments?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Yes. Then again, the people who will be charged to this tax are people who can afford to pay tax.

Mr. T. P. Poulose *(Kanayannur):* That does not matter. I only want to know what exactly is the effect of this amendment—whether this amendment will make the new Act applicable only to people who will be liable to pay excess profits tax or whether it will not be applicable to all cases where income-tax is leviable?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Let me put a question to you.

Mr. T. P. Poulose *(Kanayannur):* I want only an answer.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* My question will be the answer to your question. Suppose we were ready with the Act last year.....

Mr. T. P. Poulose *(Kanayannur):* Then it will be ready there. I am not advancing any argument. I want only to ascertain a fact. I am putting this question, "what the effect of this amendment will be"?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I submit that those people also will be governed by the new rates. I was just replying to Mr. Moothedan that this is not the first time that we are levying this tax. All these provisions will govern the existing assessees including those against and those in favour of this Sometimes, in the case of existing assessees, possibly they might

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stand to gain and in the case of some others they might stand to lose.

Deputy President : That will be the position according to the new amendments.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* This is not the case where for the first time we are taxing, but the immediate people who are taxed for the first time now are those taxed with excess profits tax. Of course, they will be affected by the change in rate. On the other hand, some of the existing assessees will also be benefited by the concessions that are given. In certain cases we have to deduct and in certain other cases we have to add. There is no point in saying that the existing incomes may be affected by the change. The change after all is very little. That kind of attitude in the matter of income-tax is not understandable.

Mr. Ismail Hajee Essa Sait *(Mattancheri):* On a point of information, may I know whether the new rates will affect the income earned in 1116 also?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* This Act comes into operation in 1117 and not in 1116.

Mr. A. B. Salem *(Mattancheri):* Sir, I am sorry that constitutional considerations make me oppose this amendment. It is a principle of this House that the control of the finances of the State and putting of hand into the pockets of the people, both must be guarded by this House. Now speaking pertinently upon this amendment itself we find that these amendments have not been brought forward for the consideration by the Select Committee appointed by this House. If the Government wanted these amendments to be tabled in this House and to be passed through this House, it is necessary that we who have not studied these questions should have left the matter entirely into the hands of the Select Committee aud must be guided by their opinion. We have had no time to study this financial Bill and pros and cons of the various facets of it. It is the duty of the Select Committee, and if the Select Committee that has been appointed is for the amendment, then there will be not much for the House to consider.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* How could amendments on the Committee's report be given to the Committee?

Mr. A. B. Salem *(Mattancheri):* You should have called a meeting of the Select Committee for the very purpose of considering the amendments and then come to the House with the views of the Select Committee. This procedure is very important and it is a

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privilege of the House. If the House is going to blindly support the Government in whatever measure they bring simply because of a tendency and prejudice against capitalists and accumulation in individual hands, and if that prejudice is going to carry us away, then I am sure we are losing our function. I am not going to dwell upon Excess Profits tax at all. That is of course linked with this. That is an Act which has been passed over the head of this House. What is the use of Government doing such a thing when the House is sitting in Legislative Sessions? You could have brought the Bill here, you could have had the S.O. suspended, you could have explained matters, and you could have passed it through the House. I do not think you can make much profit by the Excess Profits Tax Act, because it will affect only a few people. That is my own impression about it. However, I am not upon that question now. But on the question of a measure being rushed through this House without its mature consideration in the Select Committee, this House is bound to oppose. I, therefore, oppose the passing of these amendments in this manner without referring them back to the Select Committee for report. I request, the House if it is agreeable to refer this back to the Select Committee for consideration and report within a week or two, and we can pass it at the next Legislative meeting. I think that is the procedure that the House should adopt.

Mr. K. S. Panicker *(Ezhuvas-Mukundapuram):* After the consideration of the Select Committee should it come again here?

Mr. E. Ikkanda Warriar *(Cheruthuruthi):* Yes.

Mr. K. S. Panicker *(Ezhuvas-Mukundapuram):* There is then no necessity of wasting our time like this.

മിസ്റ്റർ ഇസ്മായിൽഹാജി ഈസ്സാസേട്ട്: കഴിഞ്ഞ ഏപ്രിൽ മാസത്തിൽ ഈ ആദായനികുതി ബിൽ ഗവമ്മെണ്ടിൽനിന്നും ഈ കൌൺസിൽ മുമ്പാകെ കൊണ്ടുവരികയും, അതിനെസംബന്ധിച്ചു് പല വാദപ്രതിവാദങ്ങളും നടത്തുകയും ചെയ്തതിനുശേഷം സെലക്ടു് കമ്മറിക്കു അയക്കുകയും ചെയ്തിരുന്നു. എന്നാൽ സെലക്ടു് കമ്മറിയുടെ റിപ്പോട്ടിൽ ഗവമ്മെണ്ടു് ഇപ്പോൾ കൊണ്ടുവന്നിട്ടുള്ള അമെണ്ടുമെണ്ടിൽ കാണുന്ന റേറു് ഒന്നും കാണുന്നില്ല. അതായതു് ആദ്യത്തെ റേറു് ഭേദപ്പെടുത്തി ഗവമ്മെണ്ടിൽനിന്നും ഇപ്പോൾ വേറെ ഒരു പുതിയ റേറു നിശ്ചയിച്ചിരിക്കുന്നു. ആദ്യം രണ്ടായിരം ഉറുപ്പികക്കു മേലുള്ളവക്കു് ടാക്സു് ചുമത്തിയിരുന്നുള്ളു. എന്നാൽ ഇപ്പോൾ ഫ, ൫ ൦ ൦ ഉറുപ്പികക്കു മേലുള്ളതിനും ടാക്സു് കൊടുക്കേണ്ടതായിട്ടാണു് ഈ അമെണ്ടുമെണ്ടുകൊണ്ടു കാണുന്നതു്.

മിസ്റ്റർ ടി. പി. പൌലോസ്സ്: അങ്ങിനെ കുറച്ചിട്ടില്ല.

റാവുസാഹിബ്ബു് കെ. അച്യുതമേനോൻ: വേറെ വല്ല ആർഗുമെണ്ടുമുണ്ടെങ്കിൽ പറയുക.

മിസ്റ്റർ ഇസ്മായിൽഹാജി ഈസ്സാസേട്ട്: ഇപ്പോഴത്തെ റേറു് ഇതാണു്.

On the first Rs. 1,500 of total Income—nil.

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On the next Rs. 3,500 of total Income—8 pies in the rupee.
On the next Rs. 5,000 of total Income—1 anna in the rupee.
On the next Rs. 5,000 of total Income—1 anna 6 pies in the Rupee.

ഈമാതിരി റേറ്റ് സെലക്ട് കമ്മറിയുടെ ആലോചനക്ക വന്നിട്ടുണ്ടോ യെന്ന് അവരുടെ റിപ്പോട്ട്കൊണ്ട എനിക്ക മനസ്സിലാക്കുവാൻ സാധിച്ചി ട്ടില്ല. ഇതിനുപുറമെ ഇപ്പോഴത്തെ ഈ Hard time-ൽ—കച്ചവടങ്ങൾ വളരെ അധഃപതിച്ചിരിക്കുന്ന ഇക്കാലത്ത്—ഗവമ്മെണ്ട് ഈ നിലയിലുള്ള ഒരു ടാക്സ്സ ഷൻ കൊണ്ടുവരുന്നതു വളരെ അന്യായമായിരിക്കുമെന്നാണ് ഞാൻ പറയുന്ന തു. (ചിരി) ആദായം ഉള്ളതിനു ടാക്സ് കൊടുക്കേണ്ടതു അത്യാവശ്യമാണ്.

മിസ്റ്റർ എം. ശിവരാമമേനോൻ: നഷ്ടത്തിനുമേലല്ല; ആദായമുള്ളതിനുമേലാ ണ് ടാക്സ് ചുമത്തീട്ടുള്ളതു.

മിസ്റ്റർ ഇസ്മായിൽഹാജി ഈസ്സാസേട്ട്: ലാഭമുള്ളവരെ അക്രമമായിട്ട പിടി ച്ചു പിഴിയുവാനല്ല ഗവമ്മെണ്ട് വിചാരിക്കേണ്ടതു. ഇങ്ങിനെയുള്ള നിയമം പാസ്സാക്കിയാൽ ഇവിടത്തെ കച്ചവടക്കാരുടെ എണ്ണം കുറഞ്ഞുപോകും. ഈ വക വൃത്തണങ്ങൾ ചെയ്യുന്നതുകൊണ്ട് (ചിരി) ഇപ്പോൾതന്നെ ഇവിടത്തെ കച്ചവട ങ്ങൾ മിക്കവാറും തിരുവിതാംകൂറിലേക്ക നീങ്ങിതുടങ്ങിയിരിക്കുന്നു. ഒന്നാമതു ഇ വിടെയുള്ള കച്ചവടക്കാർ വാർഫണ്ടിലേക്ക പണം കൊടുക്കണം; H. M. I. S. Cochin ഫണ്ടിലേക്ക പണം കൊടുക്കണം; ഇങ്ങിനെ മഹാദുരിതങ്ങൾ അനുഭവി ക്കുന്ന കച്ചവടക്കാരുടെമേൽ ഈ ദുരിതവും ചുമത്തുന്നതു ശരിയല്ല, (ചിരി). ബ്രി ട്ടീഷ് ഇൻഡ്യയിൽനിന്നു കിട്ടുന്ന ആദായം കൊച്ചിയിൽ കടത്തിപോയാൽ അ തിന്റെ മേലുംകൂടി Tax ചുമത്തുന്നതു ന്യായമായിട്ടുള്ള ഒരേർപ്പാടാണെന്നു എനി ക്കു തോന്നുന്നില്ല. ഈ സ്റ്റേറ്റിലുള്ള ആദായത്തിനുതന്നെ വളരെ നികുതി കിട്ടുന്നു ണ്ടു. ബ്രിട്ടീഷ് ഇൻഡ്യയിലേയൊ, തിരുവിതാംകൂറിലേയൊ, ആദായം ഇവിടെ കൊണ്ടുവന്നപോയാൽ അതിനുംകൂടി ടാക്സ് ചെയ്യുന്നതു തീരെ തെറ്റാണു. ഈ സമയത്തു ഇപ്രകാരം ഒരു ബിൽ കൊണ്ടുവരുന്നതു വളരെ ന്യായരഹിതമാണെ ന്നാണ് എനിക്കു തോന്നുന്നതു. ഈ അമെണ്ടുമെണ്ടിൽ പറയുന്ന സംഗതികൾ സെലക്ട് കമ്മറിയിൽ ആലോചിച്ചിട്ടില്ലാത്തതുകൊണ്ടു ഈ ബിൽ വീണ്ടും ഒ രു സെലക്ട് കമ്മറിക്കു അയച്ചു ആ കമ്മറിയുടെ അഭിപ്രായം അറിഞ്ഞതിനു ശേഷം ഇതിനു എന്തെങ്കിലും നിവാരണമുണ്ടാക്കണമെന്ന അഭിപ്രായത്തോടുകൂടി ഞാൻ ഈ ഭേദഗതിയെ പൂർണ്ണമായി എതിർക്കുന്നു.

Mr. A. V. Moothedan *(Chalakkudi):* On a point of order, is the suggestion to refer it back now to the Select Committee in order?

Mr. M. Sivarama Menon *(Advocate-General):* That is out of order, especially when the motion for consideration has been passed by this House.

Deputy President: The motion is not in order.

മിസ്റ്റർ കെ. എസ്സ്. പണിക്കർ: സർ, ഒരു സംശയം ചോദിക്കാനുണ്ടു. നികുതി ചുമത്തുന്നതു ആദായത്തിനുമേലല്ലെ?

റാവുസാഹിബ്ബ് കെ. അച്യുതമേനോൻ: അതേയുള്ളു. സകല ചിലവുക ളുംകഴിച്ചു ആദായം ഉണ്ടാകുന്നതിനായുള്ളു.

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മിസ്റ്റർ കെ. എസ്സ്. പണിക്കർ: ഈ അമെണ്ടുമെണ്ടുകൊണ്ട് ടാക്സ് കൂടുതലായിട്ടു വരുമോ?

റാവുസാഹിബ്ബ് കെ. അച്ചുതമേനോൻ: ചിലക്ക കൂടിയെന്നും വരും, ചിലക്ക കുറഞ്ഞുവെന്നും വരും. അതായതു് സാധുക്കൾക്ക കുറയും, വലിയവക്ക് സപല്പം കൂടും.

Mr. M. K. Devassy *(Adur):* Sir, I rise to oppose the amendment. I would very much like that merchants who had profiteered to be taxed. But I am very much against the principle of giving retrospective effect to a legislation which is imposing additional obligation on persons. As a matter of fact I had occasion to refer to this principle when the Cochin Kuries Bill was introduced in this House and it is on the strength of that very same principle that I now rise to oppose this motion by the Government. The only argument brought by the Treasury Bench is the passing of the Excess Profits Tax Act. Who is responsible for it? As a matter of fact, I for one was astounded to find that Act in the Government Gazette coming as a surprise on the Legislature. I ask those who sit on the Treasury Bench, was not the Excess Profits Bill discussed months ago in many other legislatures? Where was our Government then? Was our Government sleeping when the idea of Excess Profits Tax Act entered other Governments and they were introducing these Bills? Could you not have considered it then? Have you made any attempt to introduce this measure at that time? Do not think, Sir, that you can exploit this House by putting us against rich men. According to me even if he is a rich man, even if he is an exploiter of the worst degree, he must be given an occasion of expressing his views here. I for one can see here members representing various interests and who come here with a view to express their views on behalf of the interests they represent. You have done an injustice by introducing the Excess Profits Tax Act without the consent of this House, behind the back of this House, to those members representing the commercial interests in this House.

Mr. A. B. Salem *(Mattancheri):* Why, I may be rich tomorrow? In that case it will affect me.

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Mr. M. K. Devassy *(Adur):* Yes. Tomorrow you might bring a legislation against us. Therefore, Sir, I cannot for a moment lend my support to a policy of the Government which introduces legislations which vitally affect public interests, legislations which are important and legislations which have seen discussions for several days in other legislatures without introducing them into this House. And whatever may be the consequence of such legislations which you have conceived upon yourselves, the responsibility of which you have taken upon yourselves, whatever be the results of such legislations, this House would not be here to ratify that act and to pass legislations to suit your interests. Therefore, Sir, on this one principle that it is against all conventions of a legislation to give retrospective effect to a legislation which imposes additional obligation on a party I oppose the motion.

Mr. T. P. Poulose *(Kanayannur):* I support this amendment. When I put a few questions to the Hon'ble Secretary to Government, my object was to elucidate certain points and to clear certain doubts which I had in my mind. I support this amendment not for the reasons which the Hon'ble Secretary to Government has given. He has said that since the Excess Profits Tax Act has become law, unless retrospective effect is given to this Income-tax Bill, the Excess Profits Tax Act cannot be worked. I do not at all for a moment believe that if retrospective effect is not given to this Act, the Government will be faced with insurmountable difficulties in the working of the Excess Profits Tax Act. If there is any reference to any other enactment in that Act, the reference must be to the Act as it then stood. I cannot for a moment believe that the Excess Profits Tax Act was passed in the expectation that this Legislature would pass the Income-tax Act as the Government would desire it to be passed. That argument, I do not believe. I support this amendment mainly for the reason that this Income-tax Bill proposes to readjust the incidence of taxation on a more equitable basis. The step system on which the Income-tax Law as it now exists in the State is based, is sought to be substituted by what is called the slab system. I would submit that the slab system is a more equitable one. To show the practical working of the new amendments introducing the slab-system I have just tried to work out the respective taxes that certain grades of income will have to pay under the existing law and the proposed amendments. Under the old Act, a man with an income of Rs. 2,000 will have to pay 8,000 ps. as income-tax. Under the proposed Act, he will have to pay only 4,000 pies. That is the result of the slab system. Under the amendments sought to be introduced, out of a person's income of

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Rs. 2,000, Rs. 500 above is taxed. Rs. 1,500 is left tax free. The first slab on income is left tax free and higher slabs alone are sought to be taxed. The higher the slab the higher the rate of tax. A man's income is divided into various slabs, the lowest slab is left un-taxed and every successive slab is taxed at progressive rates. The slab system will also abolish the sudden differences between taxes on different ranges of income. For example, the difference between tax on Rs. 4,999 and that on Rs. 5,100 will be very great according to the existing Act because Rs. 4,999 will be taxed at the rate of 4 ps. in the rupee, where as income of Rs. 5,100 will be taxed— every rupee in it—at the rate of 6 ps. in the rupee. According to the slab system only the excess will be taxed at the increased rate. The first slab of Rs. 1,500 will be left tax free, the next Rs. 3,500 will be taxed at the lower rate and the excess over Rs. 5,000 will be taxed at the higher rates so much so the new rule works on a more equitable basis. The Bill benefits poorer incomes and only affects those who can afford to pay more. Then what is the harm in giving it retrospective effect so as to make it applicable to taxes payable in 1117? In substance we are not giving retrospective effect, but only effect from 1117, *i.e.* this year. We are not giving retrospective effect so as to re-open assessments made in 1116 or previous years. We are giving retrospective effect only so as to affect the taxes payable in 1117, *i.e.* the year in which we are passing this Act.

Mr. A. V. Moothedan *(Chalakkudi):* But the tax is proposed to be levied on the incomes of 1116.

Mr. T. P. Poulose *(Kanayannur):* Incomes of 1116 are taken into account only for the purpose of fixing the income-tax payable in 1117. If it is conceded that the new law involves an equitable readjustment of the incidence of taxation why not we levy tax for 1117 on that equitable basis?

Mr. A. V. Moothedan *(Chalakkudi):* In the original Act when the Maharaja has given assent to it in Meenam 1108, the Act actually comes into force only from 1st Chingam 1109. But here there is retrospective effect given in that the Act comes into force from Chingam 1117. Is it not retrospective effect?

Mr. T. P. Poulose *(Kanayannur):* We are levying tax in 1117 the year in which we pass the new Act—according to the new Act. We are not re-opening the taxes payable in 1116. We are only levying taxes payable in 1117 according to the new Act. It may be

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technically retrospective, because the basis of taxation for 1117 is the income of 1116. But substantially we cannot say there is much of retrospective effect given to this enactment, and since it involves an equitable principle.....

Mr. A. V. Moothedan *(Chalakkudi):* Equity varying with persons!

Mr. T. P. Poulose *(Kanayannur):* I said it is equitable because the sharp differences between taxes payable on various grades of income are sought to be abolished and a more equitable scheme is sought to be introduced by this amendment. Further burden of taxation on poorer classes is reduced to some extent. Since the Act is based upon equitable principles and since retrospective effect sought to be given is only technical and not substantial, I support this amendment. At the same time I endorse every word of Mr. Devassy with regard to the way in which the Excess Profits Tax Act has become law.

Mr. E. Ikkanda Warriar *(Cheruthuruthi)*: What about the amounts paid this year?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* We have not begun to collect this year.

***Mr. C. R. Iyyunni** *(Trichur-South):* The objection that I raise with regard to the amendments that have been proposed by the Government is based on one fundamental ground that when a Bill has been sent for enquiry into the Select Committee, the Select Committee cannot go beyond the basis of that scheme, which is underlying the Bill itself. Similarly when a Bill has been sent for enquiry into a Select Committee and the Select Committee has submitted its report, then, if amendments are of a nature which will not fall within the scope of the scheme of the Act, such amendments should not be allowed. It is not on that ground that I object to some of the amendments that are proposed by the Government. Even at the time when the Bill was introduced by the Government the distinction between the remittance basis and accrual basis was clearly explained and it was stated that the Bill has for its basis the remittance basis. It was on that understanding that the Bill itself was sent to the Select Committee and the Committee did not go beyond the scope of the reference. And now after the Select Committee has submitted its report, and when the Bill is being considered by this House it is not proper for the Government or for the matter of that any member to suggest modifications or amendments which will not fall within the scope of the scheme of the Bill.

*Speech not corrected by the hon'ble member.

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It is on that basis that I say that these amendments should not be allowed.

Mr. T. P. Poulose *(Kanayannur):* May I know the amendment that is discussed now?

Mr. C. R. Iyyunni *(Trichur-South):* I am just now not on any particular amendment. But I am making a general speech just as the Hon'ble Secretary to Government made just now. If my friend wants to know which that amendment is I will say what it is.

"In Clause 5.—

(*a*) in sub-clause (1) (*b*).—

(*i*) after sub-clause (*i*) insert the following.—

(*ii*) accrue or arise to him without Cochin during such year or".

That is based upon the accrual basis and not on remittance basis. I am simply saying certain things in general and not with regard to this particular matter. With regard to the appendage of the schedule that also was not in the contemplation of the Select Committee. Now, in this Bill, it is sought by the Government to introduce the rates also. I do not think, that is perfectly proper.

Then with regard to the specific amendment where the figure "1118" is to be changed to "1117", the argument that was advanced by the member is that because Government has promulgated the Excess Profits Tax Act and because that Act has an indispensable connection of an intimate nature with the present Bill it cannot be worked unless this is also passed immediately with retrospective effect. There is absolutely nothing of that kind. The Excess Profits Tax Act has absolutely nothing to do with the amendments or with the Income-tax Act which is in force now. Of-course, the standard may slightly vary. But even with the old Act the Excess Profits Tax Act could be worked without any difficulty whatsoever. And there are people also to whom the Excess Profits Tax Act may not apply to whom this Act or the former Act will apply. So far as this point is concerned there is no difficulty whatever.

The whole thing depends upon what will be the standard income over or above which the Excess Profits Tax is to be imposed. There will be some collection so far as some particular gentlemen or merchants are concerned, and not with regard to all the merchants concerned. There is no inextricable connection between the Excess Profits Tax Act and this Act. That is not an Act which has come into force with our consent. We have a right to be consulted before that. That was not done. If there is any argument to be advanced, certainly that cannot apply to us. So that argument is out of the question now.

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Then with regard to the view that there is no retrospective effect. There is retrospective effect as a matter of fact, because the income will be assessed on the basis of the income that has been derived in 1116. It cannot be possibly said that practically there is no retrospective effect. There is practically retrospective effect. On that ground I submit that this amendment sould not be accepted by this House.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I answered the other point, why not introduce the Excess Profits Tax Act. I never heard that it is a retrograde measure. There is no argument regarding its merits. But the only argument was that that ought to have come in the regular course. If we wanted to tax the profits of 1116, there was hardly time.

Mr. C. R. Iyyunni *(Trichur-South):* The Excess Profits Tax Act was passed long long before.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Your argument was it should have been passed long before. The right of the House I do not deny. If, in spite of the fact that the Excess Profits Tax Act ought to have been passed long before, it was passed without having the regular course, you will excuse or you will overlook that fact if the Act itself is passed. The Act will not become bad because it was passed not with the consent of this House. I never meant that the Act should not have come here. Can you argue that because it had retrospective effect, you won't recognise it? Is it not the attitude which ought not to come from the Members of this House? I say there are other people here who say that here is a beneficial measure which ought to have come long long before into existence, other countries have passed it. The Government's explanation is that if it had taken the normal course, the income of 1116 would have escaped the tax.

Mr. T. P. Poulose *(Kanayannur):* It is scarcely three weeks since you have passed that measure. That Bill could have been introduced in this Council. In two days' time it could have been passed.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Do you mean to say that this should not be sent to a Select Committee.

Mr. T. P. Poulose *(Kanayannur):* If you think it is a good measure, then without a Select Committee, you can get it passed.

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Rao Sahib K. Achyuta Menon *(Secretary to Government):* You forget that there are returns to be called for. It must take some time.

Mr. T. P. Poulose *(Kanayannur):* Two days will do.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Then you have to call for returns. What exactly is the calamity that has happened upon the question of the amendment? Leave alone the other matter. Have you not on several occasions dragged the Government to pass Proclamations? The moratorium was passed by a Proclamation. Where was the hurry? We could have introduced a legislation on that. In beneficial legislation nobody finds fault with the Government for having introduced it in a hurry.

We want the privilege of doing good things, instead of leaving it entirely to the House. ധർമ്മം കൊടുപ്പാനുള്ള അധികാരം കാരണവക്കാണ്. I am only taking it in that light. It may not have much power on this amendment. You need not push it further and say that we will object to every piece of amendment in this statute.

Mr. C. R. Iyyunni *(Trichur-South):* If our rights and privileges are violated.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* But I am appealing to them not to take that view, if the legislation is beneficial.

Deputy President: The hon'ble members have expressed their protest against the method adopted by the Government. For that reason we cannot oppose the amendment.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* It is not really retrospective at all. When the Select Committee passed this Bill, it passed the slab system and agreed to the principle of the Bill. There is no question about that. The income that is taxed in 1117 will be the income of 1116. It really works in favour of small incomes. It is a distinct improvement. The question is whether you should wait to postpone it to 1118. Intrinsically the adoption of these rates is to their benefit. Why postpone it to 1118?

Mr. C. R. Iyyunni *(Trichur-South):* It is not with regard to one point. There is a provision here regarding the first Rs. 1,500. That is the only advantageous portion. With regard to all others it will go up?

Rao Sahib K. Achyuta Menon *(Secretary to Government):* It goes on a sliding scale. The average assessee in the State stands to gain. There are some exceptional people who may not be benefited by adopting the slab entry. We perfectly understand the

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attitude. But as a whole the assessee stands to gain. Why postpone it to 1118? It is not a case of income for the first time to be assessed. The profits of the standard and that charged must both be calculated on the same principle in order that the Excess can be found out. The excess can be found out if likes are compared to likes. The profits are for the purpose of assessment. I must point out that for the purpose of the neat working of the Excess Profits Tax Act it is better that a new Income-tax Act is passed as early as possible. The Acts must be worked out artistically too. We have suffered in some cases by inartistic legislation. I submit therefore that it should be changed to 1117. Nobody is going to be affected by this.

Amendment put and carried

Clause 3 as amended put and carried

Clause 4

Rao Sahib K. Achyuta Menon *(Secretary to Government)*: Sir, I move the following amendment to clause 4.—

In Clause 4, substitute the words "at the rates specified" in Schedule II to this Act," for the words "at the rate or rates as may be fixed by Act of the Legislature".

Mr. M. Sivarama Menon *(Advocate-General)*: I second it.

Amendment put and carried

Clause 4 as amended put and carried

Clause 5

Rao Sahib K. Achyuta Menon *(Secretary to Government)*: Sir, I move the following amendments to Clause 5.—

In Clause 5.—

(*a*) in sub-clause (1) (*b*).—

(*i*) after sub-clause (*i*) insert the following.—

"(*ii*) accrue or arise to him without Cochin during such year or"

(*ii*) re-number the existing sub-clause (*iii*) as sub-clause (*iii*) and insert the words "before the beginning of such year and" between the words "Cochin" and "after"

(*b*) between sub-clause (*i*) (*c*) and explanation 1 of sub-clause (1) insert the following:—

"Provided that there shall not be included in any assessment for the year ending on the last day of Karkadagam 1117 both the amount of the income, profits and gains referred to sub-clause (*ii*) of clause (*b*) and the amount of the income, profits and gains referred to in sub-clause (*iii*) of clause (*b*) but only the greater of these two amounts:

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Provided further that, in the case of a person not ordinarily resident in Cochin, income, profits and gains which accrue or arise to him without Cochin shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in Cochin by him during such year:

Provided further that if in any year the amount of income accruing or arising without Cochin exceeds the amount brought into Cochin in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees".

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I second the amendments

Mr. C. R. Iyyunni *(Trichur-South):* I oppose amendment (*a*). That does not come within the scope of the former Act that was sent up for consideration.

Rao Sahib K. Achyuta Menon *(Secretary to Government):* But I pointed out that the income brought here is taxed. It is to secure uniformity of difficulties about double taxation. Now we are on a par with all the States in British India.

Mr. C. R. Iyyunni *(Trichur-South):* My point is simply this. The bill that was sent for enquiry into the Select Committee had a particular scope. This goes beyond it and therefore I say I object to it.

Amendment put and carried

Clause 5, as amended, put and carried

Clause 6

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that clause 6 may be amended as follows.—

"In sub-clause (*a*)

(*a*) to sub-clause (*iii*) the words "or" shall be added; and

(*b*) after sub-clause (*iii*) the following sub-clause shall be added, namely.—

"(*iv*) is in Cochin for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in Cochin during that year is likely to remain in Cochin for not less than three years from the date of his arrival".

Mr. M. Sivarama Menon *(Advocate-General)* I second the amendments.

Amendments put and carried

Clause 6, as amended, put and carried

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Clauses 7 to 12

Clauses 7 to 12 put and carried

Clause 13

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to clause 13.—

"In Clause 13.—

(*a*) in sub-clause (2) (*vi*).—

(*i*) between the words "equivalent" and "to" insert the following.—

"where the assets are ships other than ships ordinarily plying on inland waters, to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other case"

(*ii*) in clause (*b*) of the proviso substitute the figures "1117" for "1118" and

(*iii*) after the words "owing to profits or gains chargeable being less than the allowance", the following shall be inserted, namely.—

"then, subject to the provisions of clause (*a*) of the proviso to sub-section (2) of Section 30";

(*b*) in sub-clause (5).—

(*i*) for clauses (*b*) and (*c*) the following clause shall be substituted namely.—

"(*b*) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act, or any Act, repealed thereby"

(*ii*) in the first proviso, for the words, brackets and letters "clauses (*a*), (*b*) and (*c*)" the words, brackets and letters "clauses (*a*) and (*b*)" shall be substituted;

(*iii*) the second proviso shall be omitted.

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendments put and carried

Clause 13 as amended put and carried

Clause 14

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that the following sub-clause shall be added to clause 14:—

"(4) Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the building is inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the

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provisions of clauses (*iv*) (*v*) and (*vi*) of sub-section (2) of Section 13 in respect of such buildings".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

Clause 14 as amended put and carried

Clauses 15 and 16

Clauses 15 and 16 put and carried

Clause 17

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir I move the following amendment to clause 17.—

In clause 17 (2).—

(*a*) to sub-clause (*b*) the word "or" shall be added, and

(*b*) after sub-clause (*b*) the following sub-clause shall be added, namely.—

"(*c*) in respect of any income, profits or gains accruing or arising to him within British India or an Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into Cochin in the previous year by or on behalf of the assessee, or are assessable under section 52".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendments put and carried

Clause 17 as amended put and carried

Clause 18

Clause 18 put and carried

Clause 19

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I move the following amendments to clause 19.—

In clause 19, (2).—

(*a*) for the words beginning with "and shall be increased by the amount of income-tax" and ending with "deemed to have been paid, credited or distributed" the following words shall be substituted, namely.—

"and shall be increased to such amount as would, if income-tax (but not super-tax) at the rate applicable to the total income of a company for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend";

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(*b*) in the proviso, for the words "the income-tax to be added" the words "the increase to be made" shall be substituted.

Amendments put and carried

Clause 19, as amended, put and carried

Clause 20

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that in clause 20, after sub-clause (2) the following sub-clauses shall be added, namely.—

'(3) Where there is included in the total income of any assessee any income exempted from tax under clause (c) of sub-section (2) of section 17, the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been so exempted the same proportion as the total income less the portion so exempted bears to the total income

(4) Where any income exempted from tax under clause 'c) of sub-section (2) of section 17 which has been taken into account under sub-section (2) or sub-section (3) of this section as part of the total income of an assessee for the purpose of determining the income-tax or super-tax payable by him is in a subsequent year brought into or received in Cochin by the assessee and becomes chargeable with tax accordingly, the tax including super-tax payable by the assessee on his total income of that subsequent year shall be—

(*a*) the amount which bears to the total amount of the tax including super-tax which would have been payable on his total income as reduced by the amount of the income so brought into or received in Cochin had such reduced income been his total income the same proportion as his total income bears to such reduced income, or

(*b*) the amount which bears to the total amount of the tax including super-tax which would have been payable on the amount of the income so brought into or received in Cochin had such income been his total income the same proportion as his total income bears to the amount of the income so brought into or received in Cochin,

whichever is the greater."

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

Clause 20, as amended, put and carried

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Clause 21

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to clause 21.—

In clause 21,—

(*a*) to sub-clause (5), the following provisos shall be added, namely.—

"Provided that where the person so payable is a subject of Cochin or of any other Indian State or of British India, and the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total world income of such person will be less than the minimum liable to income-tax or that his total income will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be:

Provided further that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which the person responsible for making the payment is deemed under the first proviso to Section 53 not to be an agent of the payee."

(*b*) in sub-clause (9) for the brackets and words "(together with the amount of any income-tax payable by the company in respect thereof)" the brackets, words and figures "(increased in accordance with the provisions of sub-section (2) of section 19)" shall be substituted and for the brackets and words "together with the amount of such income-tax as aforesaid)" the brackets and words "(increased as aforesaid)" shall be substituted.

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendments put and carried

Clause 21, as amended, put and carried

Clauses 22 to 27

Clauses 22 to 27 put and carried

Clause 28

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that the following sub-clause shall be added to clause 28 namely.—

"(6) Whenever the Income-tax Officer makes a determination in accordance with the provisions of sub-section (5), he shall notify to the firm by

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an order in writing the amount of the total income on which the determination has been based and the apportionment thereof between the several partners."

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Amendment put and carried

Clause 28 as amended put and carried

Clause 29

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to clause 29.—

In clause 29, sub-clause (1),—

(*a*) Omit the words "increased by any income-tax payable thereon" occurring between the words "meeting" and "are".

(*b*) Insert the words "as reduced by the amount of income-tax and super-tax payable by the company in respect thereof" after the words "the assessable income of the company of the previous year".

(*c*) Insert the words "and reduced by the amount of income-tax and super-tax payable by the company in respect thereof" after the words "as computed for income-tax purposes".

(*d*) In the first proviso, delete the words "of the assessable income" in both the places where they occur.

(*e*) In the second proviso insert the words "as reduced by the amount of income-tax and super-tax payable by the company in respect thereof" after the words "fifty-five per cent of the assessable income of the company" and also add the same words at the end of the proviso.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I beg to second the amendments.

Amendments put and carried

Clause 29, as amended, put and carried

Clause 30

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to clause 30.—

In clause 30, sub-clause (2),—

(*a*) substitute the figures "1117" for the figures "1118" in both the places they occur and the figures "1118", "1119", "1120" and "1121" for the figures "1119", "1120", "1121" and "1122" respectively.

(*b*) before the first proviso the following proviso shall be inserted, namely.—

"Provided that—

(*a*) where depreciation allowance is, under clause (*b*) of the proviso to clause (*vi*) of sub-section (2) of Section 13,

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also to be carried forward, effect shall first be given to the provisions of this sub-section;"

(*b*) in the first proviso, for the words "Provided that" the braekets and letter "(*b*)" shall be substituted.

(*c*) in the second proviso, for the words 'Provided further that" the brackets and letter "(*c*)" shall be substituted;

(*d*) for the third proviso the following shall be substituted, namely.—

"(*d*) where a change has occurred in the constitution of a firm, nothing in this section shall be deemed to entitle the firm to have set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with the provisions of clause (*b*) of sub-section (1) of Section 19 as exceeds his share of profits, if any, of the previous year in the firm, or to entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under the said clause (b), and where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set of against the income, profits or gains."

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendments put and carried

Clause 30, as amended, put and carried

Clauses 31 to 37

Clauses 31 to 37 put and carried

Clause 38

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that in the proviso to sub-clause (1) of clause 38, after sub-clause (c) the following sub-clause shall be added.—

"(*d*) when the person liable to penalty is a registered firm, or an unregistered firm treated under Section 28 (5) (*b*) as a registered firm, so that the amount of the income-tax and super-tax payable by the firm itself has not been determined, that amount shall be taken to be an amount equal to the tax which would have been payable by an unregistered firm on an income equal to the firm's total income, and, in the cases referred to in clauses (*b*) and (*c*), the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the correct income, shall be taken to be the difference between the amount of the tax which would have been payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax payable by an unregistered firm on an income equal to the income of the firm as actually returned by the firm."

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Mr. M. Sivarama Menon *(Advocate-General):* Sir, I beg to second it.

Amendment put and carried

Clause 38 as amended put and carried

Clause 39

Clause 39 put and carried

Clause 40

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that in sub-clause (2) of clause 40, after the words "objected to" the following shall be inserted, namely.—

"or of the order in writing notifying the amount of total income on which the determination under sub-section (5) of Section 28 was based and the apportionment thereof between the several partners or of the loss computed under Section 30."

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Amendment put and carried

Clause 40 as amended put and carried

Clause 41

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to clause 41.—

In clause 41.—

(*a*) in sub-clause (4) (*a*) (*i*) the words beginning with "and, in the case of an assessment" and ending with "any member of the association", shall be omitted;

(*b*) after sub-clause (4) the following sub-clauses shall be added, namely.—

"(5) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Deputy Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(6) The Deputy Commissioner shall, on the conclusion of the appeal, communicate the orders passed by him to the assessee and to the Commissioner."

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendments put and carried

Clause 41 as amended put and carried

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Clause 42

Clause 42 put and carried

Clause 43

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that the following shall be added to clause 43, namely.—

"Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

Clause 43 as amended put and carried

Clause 44

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that the following proviso shall be added to sub-clause (2) of Clause 44 namely.—

"Provided that nothing contained in this sub-section shall apply to a re-assessment made in pursuance of an order under Section 41, Section 42 or Section 109".

Mr. M. Sivarama Menon *(Advocate-General):* I beg to second it.

Amendment put and carried

Clause 44 as amended put and carried

Clause 45

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendment to Clause 45.—

(*a*) in sub-clause (1),—

(*i*) insert the words "or refund order" after the words "assessment order";

(*ii*) substitute the words "assessment or refund" for the words "or assessment".

(*iii*) in the first proviso, after the words "enhancing an assessment" insert the words "or reducing a refund".

(*b*) in sub-clause (3) after the words "enhancing the assessment" insert the words "or reducing a refund".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.—

Amendments put and carried

Clause 45 as amended put and carried

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Clauses 46 to 49

Clauses 46 to 49 put and carried

Clause 50

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that for clause 50, the following shall be substituted.—

"50. (1) **Guardians, trustees and agents.**—Where the guardian or trustee of any person being a minor, lunatic or idiot (all of which persons are hereinafter in this sub-section included in the term "beneficiary") is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian or trustee, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age or sound mind and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

(2) Where the trustee or agent of any person not resident in Cochin and not being a minor, lunatic or idiot (such person being hereinafter in this sub-section referred to as a beneficiary) is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains chargeable under this Act, the tax, if not levied on the beneficiary direct, may be levied upon and recovered from such trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from the beneficiary if in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

Clause 50 as amended put and carried

Clause 51

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendment.—

In sub-clause (1) of clause 51, for the words "appointed under a duly executed trust deed" the words "appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise" shall be substituted.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Amendment put and carried

Clause 51 as amended put and carried

Clauses 52 to 57

Clause 52 to 57 put and carried

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Clause 58

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to clause 58,—

(*a*) in sub-clause (1) delete the words "received by him in Cochin" occurring between the words "person" and "would".

(*b*) in sub-clause (8) substitute the figures "1117" for the figures "1118".

(*c*) after sub-clause (8) add the following.—

"(9) where any person has been charged to tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act".

Mr. M. Sivaram Menona *(Advocate-General):* Sir, I second the amendments.

Amendments put and carried

Clause 58 as amended put and carried

Clauses 59 and 60

Clauses 59 and 60 put and carried

Clause 61

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that the following shall be added to clause 61.—

"Provided further that where an assessee has been assessed in respect of income arising outside Cochin in a country the laws of which prohibit or restrict the remittance of money to Cochin, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into Cochin, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into Cochin if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without Cochin or if the income whether capitalized or not has been brought into Cochin in any form".

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Amendment put and carried

Clause 61 as amended put and carried

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Clause 62

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to clause 62.—

(*a*) in the proviso to sub-clause (3), the words "in respect of the attachment and sale of debts due to the assessee" and the words "in respect of the attachment and sale of debts due to a judgment debtor" shall be omitted ;

(*b*) in sub-clause (6) insert the words "or of the proviso to Section 61" between the word and figure "Section 52" and the words "no proceedings".

(*c*) to sub-clause (6) the following proviso shall be added, namely.—

"Provided that where the sum payable is allowed to be paid by instalments the period of one year herein referred to shall be reckoned from the date on which the last of such instalments was due".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendments put and carried

Clause 62 as amended put and carried

Clauses 63 to 66

Clauses 63 to 66 put and carried

Clause 67

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that the following shall be substituted for clause 67 namely.—

Income-tax on company's dividend deemed to have been paid by shareholder.—"67. Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to any of the persons specified in Section 4 who is a shareholder of a company which is assessed to income-tax in Cochin or elsewhere, such persons shall be deemed in respect of such dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the total income of a company for the financial year in which the dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company is liable to pay income-tax bears to the whole income of the company".

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Amendment put and carried

Clause 67 as amended put and carried

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Clause 68

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that for sub-clause (1) of clause 68, the following sub-clause shall be substituted, namely.—

"(1) Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to a shareholder of a company which has obtained the relief referred to in Section 65 or granted under Section 66, the shareholder shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted in respect of income-tax only to the company for the financial year preceding the year in which the dividend was paid, credited or distributed or is deemed to have been paid, credited or distributed".

Mr. M. Sivarama Menon *(Advocate-General):* I beg to second it.

Amendment put and carried

Clause 68 as amended put and carried

Clause 69

Rao Sahib K. Achyuta Menon *(Secretary to Goveanment):* Sir, I move that the following explanation shall be added to clause 69.—

"**Explanation.**—The expression "Cochin Income-tax" in this section means income-tax and super-tax charged in accordance with the provisions of this Act".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

Clause 69 as amended put and carried

Clauses 70 to 75

Clauses 70 to 75 put and carried

Clause 76

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I move the following amendments to clause 76 (3).—

(*a*) in sub-clause (*j*), for the words "to a Returning Officer" the words "to any person, charged by Law with the duty of inquiring into the qualifications of electors" shall be substituted.

(*b*) in sub-clause (*k*) insert the word "of" before the words "so much of such".

(*c*) after sub-clause (*k*) add the following.—

"or (l) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceding against

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a lawyer or registered accountant, to the authority referred to in sub-section (3) of Section 104, when exercising the functions referred to in that sub-section."

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendments put and carried

Clause 76 as amended put and carried

Clause 77

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I move that in clause 77 the words "at the rates specified in Schedule III to this Act" shall be substituted for the words "at the rate or rates as may be fixed by Act of the Legislature".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

Clause 77 as amended put and carried

Clause 78

Clause 78 put and carried

Clause 79

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I move the following amendment to clause 79.—

In sub-clause (1) of clause 79, for the words, brackets and figures "sub-section (2) of Section 17" the words, brackets, letters and figures "clauses (*a*) and (*b*) of sub-section (2) of Section 17" shall be substituted.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Amendment put and carried

Clause 79 as amended put and carried

Clause 80

Clause 80 put and carried

Clause 81

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that the following sub-clause shall be added to clause 81.—

"(5) An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of

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the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first mentioned fund".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

Clause 81 as amended put and carried

Clause 82

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to clause 82 (1).—

(*a*) substitute the word "India" for "Cochin" in the first place where it occurs in sub-clause (*a*);

(*b*) add the following proviso to sub-clause (*a*).—

"Provided that the Commissioner may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in Cochin notwithstanding that a proportion not exceeding ten percent of the employees is employed outside India.

(*c*) add the following proviso to sub-clause (*b*).—

"Provided that an employee who retains his employment while serving in His Majesty's Forces or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding, that he receives from the employer no salary or a salary less than he would have received had he not entered His Majesty's Forces, or been so taken into or employed in the national service, contribute to the fund during his service in His Majesty's Forces or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered His Majesty's Forces or been taken into or employed in the national service"

(*d*) In sub-clause (*d*) after the words "contributions as above specified" insert the words "and of donations, if any, received by the trustees" and for the words "contributions and accumulations" substitute the words "contributions, donations and accumulations".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendments put and carried

Clause 82 as amended put and carried

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Clauses 83 to 97

Clauses 83 to 97 put and carried

Clause 98

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move that in clause 98, the words "and super-tax" shall be omitted in both the places where they occur.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Amendment put and carried

Clause 98 as amended put and carried

Clauses 99 to 103

Clauses 99 to 103 put and carried

Clause 104

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendment to Clause 104.—

In sub-clause (3) of clause 104, substitute the figures "1116" for the figures "1117".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

Clause 104 as amended put and carried

Clauses 105 to 111

Clauses 105 to 111 put and carried

Clause 112

Clause 112 put and carried

Clause 113

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I move that the following may be added after clause 112.—

"113. **Transitory provisions with respect to operation of Cochin Income-tax Act, VIII of 1108.**—All proceedings taken and all orders passed in connection with the assessments for the year commencing on the 1st day of Chingam 1117 under the Cochin Income-tax Act, VIII of 1108, and the rules thereunder shall continue to be valid.

Provided that further proceedings in connection with all such assessments shall be under the provisions of this Act:

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Provided further that if in any such assessment, any income chargeable under this Act is excluded or any deduction not allowable under this Act is allowed or any income not chargeable under this Act is included or any deduction allowable under this Act is not allowed or the tax determined is more or less than the tax payable under this Act, the Income-tax officer may modify the assessment and determine the tax payable in accordance with the provisions of this Act.

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment.

Amendment put and carried

SCHEDULE I

Rao Sahib K. Achyuta Menon *(Secretary to Government):* Sir, I move the following amendments to Schedule I.—

1. In Schedule I, rule 2, clause (*b*),—

   (*a*) between the words "average of the surplus" and "disclosed by the actuarial valuation" insert the words "arrived at by adjusting the surplus or deficit".

   (*b*) omit the words "after adjusting such surplus" occuring between the words "to be made" and "so as to exclude".

2. In Schedule I, rule 9, for the words "by a mutual insurance company" substitute the words "by a mutual insurance association".

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendments put and carried

Schedule I as amended put and carried

Schedules II & III

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I move that the following shall be added after Schedule I.—

"SCHEDULE II

(See section 4)

Rates of income-tax

A. In the case of every individual, Hindu undivided family, undivided *Marumakkat*[1] *ayam tarwad*, unregistered firm and other association of persons not being a case to which paragraph B of this schedule applies—

		Rate
1.	On the first Rs. 1,500 of total income ..	Nil
2.	On the next Rs. 3,500 of total income ..	Eight pies in the rupee
3.	On the next Rs. 5,000 of total income ..	One anna in the rupee
4.	On the next Rs. 5,000 of total income ..	One anna six pies in the rupee
5.	On the balence of total income	Two annas in the rupee

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Provided that—

(*i*) no income-tax shall be payable on a total income which does not exceed Rs. 2,000.

(*ii*) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

B. In the case of every company and local authority and in every case in which under the provisions of this Act income-tax is to be charged at the maximum rate—

	Rate
On the whole of total income	Two annas in the rupee

SCHEDULE III

(See section 77)

Rates of super-tax

A. In the case of every individual, Hindu undivided family, undivided *Marumakkathayam tarwad*, unregistered firm and other associations of persons not being a case to which paragraph B of this schedule applies—

		Rate
1.	On the first Rs. 25,000 of total income ..	Nil
2.	On the next Rs. 10,000 of total income ..	Eight pies in the rupee
3.	On the next Rs. 20,000 of total income ..	One anna four pies in the rupee
4.	On the next Rs. 70,000 of total income ..	Two annas in the rupee
5.	On the next Rs. 75,000 of total income ..	Two annas eight pies in the rupee
6.	On the next Rs. 1,50,000 of total income ..	Three annas four pies in the rupee
7.	On the next Rs. 1,50,000 of total income ..	Four annas in the rupee
8.	On the balance of total income ..	Four annas eight pies in the rupee

B. In the case of every company and local authority—

On the whole of total income	One anna in the rupee

Provided that—

(*i*) no super-tax shall be payable on a total income which does not exceed Rs. 25,000.

(*ii*) the super-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 25,000".

Schedule II is particularly favourable in the case of assessees with an income below Rs. 3,500. If the rates now proposed are adopted the assessees would gain when their income is below Rs. 3,500.

6,100 assessees would neither gain nor lose.

Mr. C. R. Iyyunni *(Trichur-South):* What is the rate in British India ?

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Rao Sahib K. Achyuta Menon *(Secretary to Government):* With regard to companies it is 2½ annas in the rupee. Here it is only 2 annas in the rupee.

On the first Rs. 1,500 of total income in the case of every individual, Hindu undivided family, etc., nil in British India as is the case here.

On the next Rs. 3,500 of total income 9 pies. Here it is 8 pies.

On the next Rs. 5,000 of total income one anna three pies. Here it is only one anna.

On the next Rs. 5,000 of total income 2 annas in British India. Here it is one anna six pies.

On the balance of total income 2 annas 6 pies in British India. Here it is 2 annas.

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendments.

Amendment put and carried

Clause 2

Clause 2 put and carried

Clause 1, Title and preamble put and carried

Rao Sahib K. Achyuta Menon *(Secretary to Government):* I move that Standing Order No. 32 be suspended and that the Bill may be taken up and finally passed to-morrow.

Motion put and carried

RESOLUTIONS

Resolution No. 6—*(cont.)*

Giving the benefit of instalment payment before decree to secured debts.

"This Council recommends to the Government that the Cochin Civil Procedure Code should be so amended as to give the benefit of instalment payment before decree to secured debts also."

[Mr. P. Achyuta Menon]

*Mr. M. Sivarama Menon** *(Advocate-General):* Sir, Government oppose the resolution. Already, provision exists in the Civil Procedure Code for the execution of the decree. After the passing of the decree, even the court has not power to give the

*Speech not corrected by the hon'ble member.

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APPENDIX IV

THE COCHIN INCOME-TAX BILL

(As modified by the Select Committee)

WHEREAS it is expedient to consolidate and amend the law relating to income-tax and super-tax; It is hereby enacted as follows.—

Short title, extent and commencement.

1. (1) This Act may be called the Cochin Income-tax Act, of 1117.

(2) It extends to the whole of Cochin; and

(3) It shall come into force on the first day of Chingam 1118.

2. The Cochin Income-tax Act, VIII of 1108, is hereby repealed.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "agricultural income" means—

(*a*) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in Cochin or subject to a local rate assessed and collected by officers of Government as such;

(*b*) any income derived from such land by—

(*i*) agriculture, or

(*ii*) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce

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raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (*ii*);

(*c*) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (*ii*) and (*iii*) of clause (*b*) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building;

(2) "assessee" means a person by whom income-tax is payable;

(3) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(4) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 8;

(5) "company" means a company as defined in the Indian Companies Act, 1913, as made applicable to Cochin or formed in pursuance of the law of any other Indian State or of an Act of Parliament or of Royal Charter or

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Letters Patent, or of an Act of the Legislature of a British possession and includes any foreign association whether incorporated or not, which the Government may, by general or special order, declare to be a company for the purposes of this Act;

(6) "dividend" includes—

(*a*) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;

(*b*) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not;

(*c*) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company:

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included; and

(*d*) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of Chingam 1112, whether such accumulated profits have been capitalised or not:

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Provided that "dividend" does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (*c*) or (*d*).

Explanation.— The words "accumulated profits", wherever they occur in this clause, shall not include "capital profit."

(7) "Deputy Commissioner" means a person appointed to be Deputy Commissioner of Income-tax under section 8;

(8) "firm", "partner" and "partnership" have the same meanings respectively as in the Cochin Partnership Act, XXIV of 1112; provided that the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership;

(9) "income" includes anything included in "dividend" as defined in clause (6) and anything which under *Explanation 2* to sub-section (1) of section 10 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (*vii*) of sub-section (2) of section 13 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in Schedule I;

(10) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 8;

(11) "local authority" means any authority legally entitled to or entrusted by the Government with the control or management of a Municipal or Town Fund;

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(12) "Magistrate" means a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Government to try offences against this Act;

(13) "person" includes a Hindu undivided family, an undivided *Marumakkathayam tarawad* and a local authority;

(14) "prescribed" means prescribed by rules made under this Act;

(15) "previous year" means in respect of any separate source of income, profits and gains—

(*a*) the twelve months ending on the last day of Karkadagam next preceding the year for which the assessment is to be made, or if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said last day of Karkadagam, then at the option of the assessee the year ending on the day to which his accounts have so been made up:

Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression "previous year" as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit; or

(*b*) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Government or by such authority

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as the Government may authorise in this behalf; or

(*c*) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the last day of Karkadagam next following or to the last day of the period determined under sub-clause (*b*), or, if the accounts of the assessee are made up to some other date than the last day of Karkadagam and the case is not one for which a period has been determined by the Government under sub-clause (*b*), then at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date:

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following last day of Karkadagam, it shall be deemed that there is no previous year; and

when the assessee is a partner in a firm, "previous year" in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm;

(16) "principal officer," used with reference to a local authority or a company or any other public body or any association, means—

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(*a*) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(*b*) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(17) "public servant" has the same meaning as in the Cochin Penal Code;

(18) "registered firm" means a firm registered under the provisions of section 36;

(19) "total income" means total amount of income, profits and gains referred to in sub-section (1) of section 5 computed in the manner laid down in this Act, and

"total world income" includes all income, profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) of section 5, this Act does not apply; and

(20) "unregistered firm" means a firm which is not a registered firm.

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CHAPTER I

CHARGE OF INCOME-TAX

Charge of Income-tax.

4. Income-tax shall be charged for every year at the rate or rates as may be fixed by Act of the Legislature in accordance with and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, undivided *Marumakkathayam tarawad*, company and local authority, and of every firm and other association of persons, or the partners of the firm or members of the association individually.

Application of Act.

5. (1) Subject to the provisions of this Act, the total income of any previous year of any

person includes all income, profits and gains from whatever source derived which —

(*a*) are received or are deemed to be received in Cochin in such year by or on behalf of such person, or

(*b*) if such person is resident in Cochin during such year.—

(*i*) accrue or arise or are deemed to accrue or arise to him in Cochin during such year, or

(*ii*) having accrued or arisen to him without Cochin after the last day of Karkadagam 1109 are brought into or received in Cochin by him during such year in any form whether capitalized or not, or

(*c*) if such person is not resident in Cochin during such year, accrue or arise, or, are deemed to accrue or arise to him in Cochin during such year:

* * *

Explanation 1.—Income, profits and gains accruing or arising without Cochin shall not be deemed to be received in or brought into Cochin within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance-sheet prepared in Cochin.

Explanation 2.—Income which would be chargeable under the head "Salaries" if payable in Cochin shall be deemed to accrue or arise in Cochin wherever paid if it is earned in Cochin.

Explanation 3.—A dividend paid without Cochin shall be deemed to be income accruing and arising in Cochin to the extent to which it has been paid out of profits subjected to income-tax in Cochin.

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(2) For the purposes of sub-section (1), where a husband is not resident in Cochin remittances received by his wife resident in Cochin out of any part of his income which is not included in his total income shall be deemed to be income accruing in Cochin to the wife;

(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :

(*i*) Any income, derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

(*ii*) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

(*a*) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(*b*) the work in connection with the business is mainly carried on by beneficiaries of the institution.

(*iii*) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

(*iv*) The income of local authorities except income from a trade or business carried on by the authority so far as that income

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is not income arising from the supply of a commodity or service within its own jurisdictional area.

(*v*) Interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act, XXIII of 1111, applies.

(*vi*) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(*vii*) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.

(*viii*) Agricultural income.

(*ix*) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of section 80.

(*x*) Any capital sum received in commutation of the whole or a portion of the pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy or as the accumulated balance at the credit of a subscriber to any Provident Fund to which the Provident Funds Act, XXIII of 1111 applies or as prize money by a subscriber in a kuri.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility

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but nothing contained in clause (*i*), clause (*ii*) or clause (*iii*) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public.

Residence in Cochin.

6. For the purposes of this Act—

(*a*) any individual is resident in Cochin in any year if he—

(*i*) is in Cochin in that year for a period amounting in all to one hundred and eighty-two days or more ; or

(*ii*) maintains or has maintained for him a dwelling place in Cochin for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in Cochin for any time in that year ; or

(*iii*) having within the four years preceding that year been in Cochin for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in Cochin for any time in that year otherwise than on an occasional or casual visit ;

(*b*) a Hindu undivided family, an undivided *Marumakkathayam tarawad*, firm or other association of persons is resident in Cochin unless the control and management of its affairs is situated wholly without Cochin ; and

(*c*) a company is resident in Cochin in any year (*a*) if the control and management of its affairs is situated wholly in Cochin in that year, or (*b*) if its income arising in Cochin in that year exceeds its income arising without Cochin in that year.

Ordinary residence.

7. For the purposes of this Act—

(*a*) an individual is "not ordinarily resident" in Cochin in any year if he has not been resident in Cochin in nine out of the ten

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years preceding that year (or if he has not during the seven years preceding that year) been in Cochin for a period of, or for periods amounting in all to, more than two years;

(*b*) a Hindu undivided family or *Marumakkathayam tarawad*, is deemed to be ordinarily resident in Cochin if its manager is ordinarily resident in Cochin;

(*c*) a company, firm or other association of persons is ordinarily resident in Cochin if it is resident in Cochin.

CHAPTER II

INCOME-TAX AUTHORITIES

Income-tax authorities.

8. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely.—

(*a*) Commissioner of Income-tax,

(*b*) Deputy Commissioner of Income-tax and

(*c*) Income-tax Officers.

(2) The Commissioner of Income-tax, Deputy Commissioner of Income-tax and Income-tax Officers shall be appointed by the Government by notification in the Cochin Government Gazette. They shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of incomes and in respect of such area as the Government may direct. The Government may, by general or special notification in the Cochin Government Gazette, direct that the powers conferred on the Income-tax Officer and the Deputy Commissioner by or under this Act shall, in respect of any specified case or classes of cases be exercised by the Deputy Commissioner, and the Commissioner, respectively, and for the purposes of any case in respect of which such a notification applies, references in this Act or in any rules made hereunder to the Income-tax

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Officer and the Deputy Commissioner shall be deemed to be references to the Deputy Commissioner and the Commissioner respectively.

(3) Deputy Commissioner of Income-tax and the Income-tax Officers appointed under sub-section (2) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax.

(4) The Commissioner of Income-tax may transfer any case from one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

CHAPTER III

TAXABLE INCOME

Heads of income chargeable to Income-tax.

9. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely.—

(*i*) Salaries.

(*ii*) Interest on securities.

(*iii*) Income from property.

(*iv*) Profits and gains of business, profession or vocation.

(*v*) Income from other sources.

Salaries.

10. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits in lieu of, or in addition to, any salary or wages, which are due to him from, whether paid or not, or are paid by or on behalf of, the Government, a local authority, a company, or any other public body or association, or any private employer; and for the purposes of this sub-section

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advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received:

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties:

Provided further that the tax shall not be payable in respect of any sum deducted from the salary payable by or on behalf of the Government to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary:

Provided further that where tax is deductible at the source under section 21, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction;

Explanation 1.—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

Explanation 2.—A payment due to or received by an assessee from an employer or former employer or from a provident or other fund at or in connection with the termination of his employment, whether or not the employment is then terminated or to be terminated, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services:

Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, XXIII of 1111, applies,

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or any payment from a recognised provident fund within the meaning of Chapter XII if such payment is exempted from payment of income-tax under the provisions of Chapter XII, or any payment from an approved superannuation fund within the meaning of Chapter XIII made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established.

(2) Any income which would be chargeable under this head if paid in Cochin shall be deemed to be so chargeable if paid to a Cochin subject or any employee of the Government of Cochin outside Cochin by or on behalf of the Government or by a local authority established by the Government.

Interest on securities.

11. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government or on debentures or other securities for money issued by or on behalf of a local authority or a company:

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without Cochin unless in respect of interest which is so chargeable tax has been paid or deducted under section 21 or unless there is a person in Cochin who may be appointed an agent under section 53 in respect of such interest:

Provided further that no income-tax shall be payable on the interest receivable on any security of the Government of Cochin issued or declared to be income-tax free;

Property.

12. (1) The tax shall be payable by an assessee under the head "Income from Property" in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of any business, profession or vocation carried

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on by him the profits of which are assessable to tax, subject to the following allowances, namely.—

(*i*) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;

(*ii*) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value;

(*iii*) the amount of any annual premium paid to insure the property against risk of damage or destruction;

(*iv*) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to an annual charge not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided that no allowance shall be made in respect of any interest or annual charge payable without Cochin and chargeable under this Act, except interest or a charge on which tax has been

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paid or from which tax has been deducted under section 21 or in respect of which there is an agent for the payee in Cochin who may be assessed under section 53;

(*v*) any sums paid on account of land revenue, local rates or Municipal taxes in respect of the property;

(*vi*) in respect of collection charges, a sum not exceeding the prescribed maximum;

(*vii*) in respect of vacancies, that part of the net annual value, after deducting the foregoing allowances, which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the net annual value, after deducting the foregoing allowances appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied;

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year:

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of the total income of the owner.

(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but

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the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.

Business.

13. (1) The tax shall be payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profit or gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely.—

(*i*) any rent paid for the premises in which such business, profession or vocation is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional annual value of the part so used:

(*ii*) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;

(*iii*) in respect of capital borrowed for the purposes of the business, profession or vocation, the amount of the interest paid:

Provided that no allowace shall be made under this clause in any case for any interest chargeable under this Act which is payable

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without Cochin except interest on which tax has been paid or from which tax has been deducted under section 21 or in respect of which there is an agent in Cochin who may be assessed under section 53 or, in the case of a firm, for any interest paid to a partner of the firm ;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause :

(*iv*) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vocation, the amount of any premium paid;

(*v*) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;

(*vi*) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee a sum equivalent to such percentage on the written down value thereof as may in any case or class of cases be prescribed:

Provided that—

(*a*) the prescribed particulars have been duly furnished;

(*b*) where full effect cannot be given to

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any such allowance in any year not being a year which ended prior to the 1st day of Chingam 1118, owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

(*vii*) in respect of any machinery or plant which, has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold, or its scrap value:

Provided that such amount is actually written off in the books of the assessee:

Provided further that where the amount for which any such machinery or plant is sold exceeds

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the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place;

(*viii*) in respect of animals which have been used for the purposes of the business, profession or vocation otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

(*ix*) any sums paid on account of land revenue, local rates or taxes to a local authority in respect of such part of the premises as is used for the purposes of the business, profession or vocation;

(*x*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission.

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

(*a*) the pay of the employee and the conditions of his service;

(*b*) the profits of the business, profession or vocation for the year in question; and

(*c*) the general practice in similar businesses, professions or vocations;

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(*xi*) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee:

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year;

(*xii*) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation;

(5) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (*iv*), clause (*v*), clause (*vi*) or clause (*vii*) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

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(4) Nothing in clause (*ix*) or clause (*xii*) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains; and nothing in clause (*xii*) of sub-section (2) shall be deemed to authorise—

(*a*) any allowance in respect of a payment which is chargeable under the head "Salaries" if it is payable without Cochin and tax has not been paid thereon nor deducted therefrom under section 21; or

(*b*) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm; or

(*c*) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head "Salaries".

(5) In sub-section (2), "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section; "plant" includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation; and "written down value" means—

(*a*) in the case of assets acquired in the previous year, the actual cost to the assessee;

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(*b*) in the case of assets acquired before the previous year but after commencement of this Act the actual cost to the assessee less all depreciation allowable to him under this section;

(*c*) in the case of assets acquired before the commencement of this Act, the actual cost to the assessee less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the 1st day of Chingam 1109, and at the rates in force on the 1st day of Chingam 1109, for each such year prior to that date:

Provided that where the provisions of the proviso to sub-section (2) of section 35 are applicable, the actual cost to the assessee referred to in clauses (*a*), (*b*) and (*c*) shall be the actual cost to the person succeeded in the business, profession or vocation:

Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st day of Chingam 1118, but to which full effect was not given owing to the absence of profits or gains chargeable for that year, or owing to the profits or gains so chargeable being less than the allowance.

(6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of

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this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(7) Notwithstanding anything to the contrary contained in section 11, 12, 13, 14 or 21, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in Schedule I to this Act.

14. (1) The tax shall be payable by an assessee under the head "Income from other sources" in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads). **Other sources.**

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of—

(*a*) any personal expenses of the assessee, or

(*b*) any interest chargeable under this Act which is payable without Cochin, not being interest on which tax has been paid or from which tax has been deducted under section 21, or

(*c*) any payment which is chargeable under the head "Salaries", if it is payable without Cochin and tax has not been paid thereon nor deducted therefrom under section 21.

(3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (*iv*), (*v*), (*vi*) and (*vii*) of sub-section (2) of section 13.

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Managing Agency Commission.

15. Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

Method of accounting.

16. Income, profits and gains shall be computed, for the purposes of sections 13 and 14, in accordance with the method of accounting regularly employed by the assessee:

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

Exemptions of a general nature.

17. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family or an undivided *Marumakkathayam tarawad*.

(2) The tax shall not be payable by an assessee—

(*a*) if a partner of an unregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (*b*) of sub-section (1) of section 19 on which the tax has already been paid by the firm: or

(*b*) if a member of an association of persons other than a Hindu undivided family, an undivided *Marumakkathayam tarawad*, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association.

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18. (1) The tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee, or as a contribution to any provident fund to which the Provident Funds Act, XXIII of 1111, applies. **Exemption in the case of life insurances.**

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member and where the assessee is an undivided *Marumakkathayam tarawad* there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any member of the *tarawad*.

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the second proviso to sub-section (1) of section 10 and any sums exempted under sub-section (1) of section 85, exceed in the case of an individual, one-sixth of the total income of the assessee, or six thousand rupees whichever is less, and in the case of a Hindu undivided family, or undivided *Marumakkathayam tarawad*, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less.

19. (1) In computing the total income of an assessee— **Exemptions and exclusions determining the total income.**

(*a*) any sums exempted under the second proviso to sub-section (1) of section 10, the second proviso to section 11, sub-section (2) of section 17 and section 18 shall be included ;

(*b*) when the assessee is a partner of a firm, then, whether the firm has

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made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year :

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 30;

(c) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of this Act, from assets remaining the property of the settlor or disponer, shall be deemed to be income of the settlor or disponer, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transfer :

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor, disponer or transferor, or in any way gives the settlor, disponer or transferor a right to reassume power directly or indirectly over the income or assets :

Provided further that the expression "settlement or disposition" shall for the purposes of

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this clause include any disposition, trust, covenant, agreement, or arrangement, and the expression "settlor or disponer," in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made:

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponer derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him.

(2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased by the amount of income-tax (but not super-tax) payable thereon at the rate applicable to the total income of a company for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed:

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the income-tax to be added under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.

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(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(*a*) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(*i*) from the membership of the wife in a firm of which her husband is a partner;

(*ii*) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;

(*iii*) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or

(*iv*) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration; and

(*b*) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both.

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20. (1) Where a person is not resident in Cochin, and is a subject of Cochin or of any other Indian State or of British India, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income; and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income. **Determination of tax payable in certain special cases.**

(2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income.

CHAPTER IV

DEDUCTIONS AND ASSESSMENT

21. (1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax and super-tax on the amount payable at a rate representing the average of the rates **Payment by deduction at source.**

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applicable to the estimated total income of the assessee under this head:

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(2) The value in rupees of any income chargeable under the head "Salaries" which is payable to the assessee out of India by or on behalf of the Government shall be calculated at the prescribed rate of exchange.

(3) Any person responsible for paying any income chargeable under the head "Salaries" to a person not resident in Cochin shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head.

(4) The person responsible for paying any income chargeable under the head "Interest on Securities" shall, unless otherwise prescribed in the case of any security of the Government at the time of payment, deduct income-tax but not super-tax on the amount of the interest payable at the maximum rate:

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income or the total world income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section or in sub-section (3), as the case may be, to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction

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or deduct the tax at such less rate, as the case may be.

(5) Any person responsible for paying to a person not resident in Cochin any interest not being "Interest on Securities", or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate.

(6) Where the Income-tax Officer has reason to believe that the total world income of any person residing out of Cochin to whom any interest not being "Interest on Securities" or any other sum chargeable under this Act is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for making such payments to such person to deduct at the time of payment super-tax at the rate determined by the Income-tax Officer to be applicable to the total world income of such person in that year.

(7) Where the person responsible for paying any interest not being "Interest on Securities" or any other sum chargeable under this Act to any person makes to that person in any year payments exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for making such payments, shall, if he has not reason to believe that the recipient is resident in Cochin, and no order under sub-section (6) has been received in respect of such recipient, deduct at the time of payment super-tax on the amount by which the total amount of such payments exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

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(8) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of Cochin and that the total world income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

(9) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has no reason to believe that the shareholder is resident in Cochin State, and no order under sub-section (8) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder.

(10) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(11) Any deduction made in accordance with the provisions of this section and any sum by

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which a dividend has been increased under sub-section (2) of section 19 shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund:

Provided further that where such person or owner is a person whose income is included under the provisions of clause (c) of sub-section (1) or sub-section (3) of section 19, section 58 or section 59 in the total income of another person such other person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

(12) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government or as the Government directs.

(13) If any such person does not deduct or after deducting fails to pay the tax as required by or under this section, he, and in the cases specified in sub-sections (8) and (9) the company of which he is the principal officer shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax:

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 62 for the recovery of any penalty from such person unless satisfied that such

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person has wilfully failed to deduct and pay the tax.

(14) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(15) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (4), (5), (6), (7), (8) or (9), shall, at the time of payment of the sum from which tax has been deducted, furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

Payment in other cases.

22. In the case of income in respect of which provision is not made under section 21 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 21, income-tax shall be payable by the assessee direct.

Supply of information regarding dividends.

23. The principal officer of every company shall, on or before the 15th day of Thulam in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.

Certificate by company to shareholders receiving dividends.

24. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Supply of information regarding interest.

25. The person responsible for paying any interest not being "Interest on Securities" shall, on or before the fifteenth day of Thulam in each year, furnish to the prescribed officer a return in the prescribed form and

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verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than four hundred rupees as may be prescribed in this behalf, together with the amount paid to each such person.

Annual return.

26. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and within thirty days from the last day of Karkadagam in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner, a return in writing showing—

(*a*) the name and, so far as it is known, the address, of every person who was receiving on the said last day of Karkadagam, or has received or to whom was due during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;

(*b*) the amount of the income so received or so due by each such person, and the time or times at which the same was paid or due as the case may be;

(c) the amount deducted in respect of income-tax and super-tax from the income of each such person.

Return of income.

27. (1) The Income-tax Officer shall, on or before the 1st day of Kanni in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the

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prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year:

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons.

(2) In the case of any person whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income and total world income during the previous year:

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(4) The Income-tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require:

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Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.

Assessment.

28. (1) If the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 27 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 27 is correct and complete, he shall serve on such person, a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified

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points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If any person fails to make the return required by any notice given under sub-section (2) of section 27 and has not made a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment and, in the case of a firm, may refuse to register it or may cancel its registration if it is already registered:

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.

(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be—

(*a*) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined:

Provided that if such share of any partner is a loss it shall be set off

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against his other income or carried forward and set off in accordance with the provisions of section 30:

Provided further that when any of such partners is a person not resident in Cochin, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm; and

(*b*) in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (*a*) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm.

Power to assess individual members of certain companies.

29. (1) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting increased by any income-tax payable thereon are less than sixty per cent of the assessable income of the company of that previous year, he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness

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of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income:

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the words "sixty per cent of the assessable income" the words "one hundred per cent of the assessable income" were substituted:

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent of the assessable income of the company, unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent of the assessable income of the company of the previous year concerned:

Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of

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the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

Explanation.—For the purpose of this sub-section, a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in India or are in fact freely transferable by the holders to other members of the public.

(2) The Income-tax Officer shall not pass any order under this section until he has given the company concerned an opportunity of being heard.

'3) (i) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (1) the tax payable in respect thereof shall be recoverable from the company, if it cannot be recovered from such member.

(ii) Where tax is recoverable from a company under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company shall be deemed to be the assessee in respect of

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such sum, for the purposes of Chapter VIII.

(4) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

(5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company.

Set-off of loss in computing aggregate income.

30. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 9, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year:

Provided that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 28 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section.

(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the last

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day of Karkadagam 1118, under the head "Profits and gains of business, profession or vocation", and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the last day of Karkadagam 1118, the last day of Karkadagam 1119, the last day of Karkadagam 1120, the last day of Karkadagam 1121, and the last day of Karkadagam 1122, respectively, shall be carried forward only for one, two, three, four and five years, respectively:

Provided that nothing herein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under the provisions of clause (*b*) of sub-section (5) of section 28 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm:

Provided further that where an unregistered firm is assessed as a registered firm under clause (*b*) of sub-section (5) of section 28, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm:

Provided further that where a change has occurred in the constitution of a firm, or where

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any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section.

Assessment in case of departure from Cochin.

31. (1) When it appears to the Income-tax Officer that any person may leave Cochin State during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his departure from Cochin State or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from Cochin State. The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made:

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains

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which have escaped assessment or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but in respect of which he is debarred from issuing a notice under section 44.

(2) For the purpose of making an assessment under sub-section (1) the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 27, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the relevant period referred to in the first sentence of sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 27.

Tax of deceased person payable by representative.

32. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 27 or before he is served with a notice under sub-section (2) of section 27 or section 44, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 27 or under section 44, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total

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income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 27, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 27 and 28 have required from the deceased person.

Assessment in case of discontinued business.

33. (1) Where any business, profession or vocation, is discontinued in any year an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession

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or vocation up to the date of its discontinuance.

(3) Where an assessment is to be made under sub-section (1), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, or any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 27, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Assessment after partition of a Hindu undivided family or an undivided Marumakkathayam Tarawad.

34. (1) Where, at the time of making an assessment under section 28, it is claimed by or on behalf of any member of a Hindu family or *Marumakkathayam tarawad* hitherto assessed as undivided that a partition has taken place among the members of such family, or *tarawad*, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied that the joint family or undivided *tarawad*, property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect:

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family or an undivided *Marumakkathayam tarawad* whose joint family property or undivided *tarawad* property has been partitioned on or after the last day on which it carried on such business, profession or vocation, the

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Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family or undivided *tarawad* as such, as if no partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 17, be liable for a share of the tax on the income so assessed according to the portion of the joint family or undivided *tarawad* property allotted to him or it;

and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 28:

Provided that all the members and groups of members whose joint family or undivided *tarawad* property has been partitioned shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family or undivided *tarawad* as such.

(3) Where such an order has not been passed in respect of a Hindu family or a *Marumakkathayam tarawad* hitherto assessed as undivided, such family or *tarawad* shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family or undivided *Marumakkathayam tarawad*.

Change in constitution of a firm.

35. (1) Where, at the time of making an assessment under section 28, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment:

Provided that the income, profits and gains of the previous year shall for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in

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such previous year were entitled to receive the same:

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.

(2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year:

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

Procedure in registration of firms.

36. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with

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by the Income-tax Officer in such manner as may be prescribed.

Cancellation of assessment when cause is shown.

37. Where an assessee within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 27, or that he did not receive the notice issued under sub-section (4) of section 27, or sub-section (2) of section 28 or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 28.

Penalty for concealment of income or improper distribution of profits.

38. (1) If the Income-tax Officer, the Deputy Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 27 or section 44 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice; or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (4) of section 27 or sub-section (2) of section 28 or

(*c*) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, in the case referred to in clause (*a*), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times

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that amount, and in the cases referred to in clauses (*b*) and (*c*), in addition to any tax payable by him, a sum not exceeding one and half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income:

Provided that—

(*a*) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of section 27;

(*b*) where a person has failed to comply with a notice under sub-section (2) of section 27 or section 44 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees;

(*c*) no penalty shall be imposed under this sub-section upon any person, assessable under section 52 as the agent of a person not resident in Cochin for failure to furnish the return required under section 27 unless a notice under sub-section (2) of that section or under section 44 has been served on him.

(2) If the Income-tax Officer, the Deputy Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution,

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and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax and super-tax, if any payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of income-tax and super-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) The Deputy Commissioner or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer.

(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Deputy Commissioner.

Notice of demand.

39. When any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable.

Appeal against assessment under this Act.

40. (1) Any assessee objecting to the amount of income assessed under section 28 or section 37, or the amount of loss computed under section 30 or the amount of tax determined under section 28 or section 37, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax

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Officer to register a firm under section 36 or to make a fresh assessment under section 37, or objecting to any order under sub-section (2) of section 33 or section 34 or sub-section (2) of section 35 or section 38, made by an Income-tax Officer or objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of section 59 or sub-section (5) of section 60 or sub-section (1) of section 62 or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 64, 65 or 71, or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section (1) of section 29, may appeal to the Deputy Commissioner against the assessment or against such refusal or order:

Provided that no appeal shall lie against an order under sub-section (1) of section 62 unless the tax has been paid:

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Deputy Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income:

Provided further that a shareholder in a company in respect of which an order under section 29 has been passed by an Income-tax Officer, may not in respect of matters determined by such order appeal against the assessment of his own total income.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice

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of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (1) of section 34 or to register a firm under section 36 or of the date of the refusal to make a fresh assessment under section 37 or of the intimation of an order under sub-section (1) of section 29 or under section 64, 65 or 71, as the case may be; but the Deputy Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Hearing of appeal.

41. (1) The Deputy Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The Deputy Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(3) The Deputy Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Deputy Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(4) In disposing of an appeal the Deputy Commissioner may—

(*a*) in the case of an order of assessment—

(1) confirm, reduce, enhance or annul the assessment and, in the case of an assessment on a firm or association of persons, authorise the Income-tax Officer to amend accordingly any assessment made

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on any partner of the firm or any member of the association, or

(2) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Deputy Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment, or

(*b*) in the case of an order refusing to register a firm under section 36, or to make a fresh assessment under section 37, confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be, or

(*c*) in the case of an order under sub-section (2) of section 33 or sub-section (1) of section 29, or sub-section (2) of section 35 or section 64, 65 or 71, confirm, cancel or vary such order, or

(*d*) in the case of an order under sub-section (1) of section 34, confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 34, or

(*e*) in the case of an order under section 38 or sub-section (6) of section 59 or sub-section (5) of section 60 or sub-section (1) of section 62, confirm or cancel such order or vary it so as either to enhance or reduce the penalty, or

(*f*) in the case of an appeal against a computation of loss under section 30, confirm or vary such computation:

Provided that the Deputy Commissioner shall not enhance an assessment or a penalty unless the appellant has

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had a reasonable opportunity of showing cause against such enhancement:

Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative.

Appeals against orders of the Deputy Commissioner.

42. (1) Any assessee objecting to an order passed by the Deputy Commissioner under section 38 or to an order under sub-section (4) of section 41 enhancing his assessment or a penalty imposed under section 38 or sub-section (6) of section 59 or sub-section (5) of section 60 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order:

Provided that the Commissioner may admit the appeal after the expiration of thirty days if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

Power of revision.

43. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the powers of the Deputy Commissioner under sub-section (2) of section 8.

(2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him

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or giving him a reasonable opportunity of being heard.

Income escaping assessment.

44. (1) If in consequence of definite information which has come into his possession the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act the Income-tax Officer may, in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 27, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be:

Provided further that when the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of this Act, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 53, this sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted.

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(2) No order of assessment under section 28 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry, in any case to which clause (c) of sub-section (1) of section 38 applies, of eight years, and in any other case, of four years from the end of the year in which the income, profits or gains were first assessable.

Rectification of mistake.

45 (1) The Commissioner or Deputy Commissioner may, at any time within four years from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 43 and the Income-tax Officer may, at any time within four years from the date of any assessment order passed by him, on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee:

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Commissioner, the Deputy Commissioner or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard:

Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of this Act.

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of

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demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 39, and the provisions of this Act shall apply accordingly.

Tax to be calculated to nearest anna.

46. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

Power to take evidence on oath, etc.

47. The Income-tax Officer, the Deputy Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1111, when trying a suit in respect of the following matters, namely.—

(*a*) enforcing the attendance of any person and examining him on oath or affirmation;

(*b*) compelling the production of documents; and

(*c*) issuing commissions for the examination of witnesses, and any proceeding before an Income-tax Officer, Deputy Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 179 and 214 and for the purposes of section 182 of the Cochin Penal Code.

Power to call for information.

48. The Income-tax Officer or the Deputy Commissioner may, for the purposes of this Act,—

(1) require any firm, or Hindu undivided family or *Marumakkathayam tarawad* to furnish him with a return of the members of the firm, or of the manager or adult male members of the family or *tarawad*, as the case may be, and of their addresses;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses;

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(3) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head "Salaries", amounting to more than four hundred rupees, together with particulars of all such payments made.

Power to inspect the register of members of any company.

49. The Income-tax Officer or the Deputy Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or the Deputy Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

CHAPTER V

LIABILITY IN SPECIAL CASES

Guardians, trustees and agents.

50. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of Cochin (all of which persons are hereinafter in this section included in the term beneficiary) being entitled to receive on behalf of such beneficiary, any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind or resident in Cochin and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly:

Provided that in the case of a beneficiary being a person residing out of Cochin the tax may be levied upon and recovered from him direct.

Court of Wards, etc.

51. (1) In the case of income, profits or gains chargeable under this Act which the Court of Wards, or any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order

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of a Court, or any trustee or trustees appointed under a duly executed trust deed (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Charitable Endowment Act, XXXI of 1111), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, receiver or manager or trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable, and all the provisions of this Act shall apply accordingly :

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate :

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part.

(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.

52. (1) All income, profits or gains accruing or arising, whether directly or indirectly, through or from any business connection in Cochin, or through or from any property in Cochin, or through or from any asset or **Non-residents.**

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source of income in Cochin, or through or from any money lent at interest and brought into Cochin in cash or in kind, shall be deemed to be income accruing or arising within Cochin, and where the person entitled to the income, profits or gains is not resident in Cochin, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

Provided that where the person entitled to the income, profits or gains is not resident in Cochin, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 21 and that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within Cochin:

Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person (as to the amount to be so retained, such agent or person) may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount:

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.

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(2) Where a person not resident or not ordinarily resident in Cochin carries on business with a person resident in Cochin, and it appears to the Income-tax Officer, that owing to the close connection between such persons the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

(3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in Cochin by him or by any agency or branch on his behalf of any merchandise exported to Cochin by him or any agency or branch on his behalf from any place outside Cochin, the profits or gains shall be deemed to have accrued and arisen and to have been received in Cochin and no allowance shall be made under sub-section (2) of section 13 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains.

Agent to include persons treated as such.

53. Any person employed by or on behalf of a person residing out of Cochin, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent:

Provided that where transactions are carried on in the ordinary course of business through a broker in Cochin in

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such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions:

Provided further that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

Liability in case of a discontinued firm or association.

54. Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.

CHAPTER VI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING

Liability to tax of occasional shipping.

55. The provisions of this Chapter shall notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of Cochin and carries on business in Cochin in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Return of profits and gains.

56. (1) Before the departure from any port in Cochin of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full

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amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

Adjustment.

57. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in the year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.

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CHAPTER VII

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF LIABILITY TO INCOME-TAX AND SUPER-TAX

Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad.

58. (1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person, received by him in Cochin would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in Cochin, acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first mentioned person for all the purposes of this Act.

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in Cochin, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

(3) Sub-sections (1) and (2) shall not apply if such first-mentioned person shows to the

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satisfaction of the Income-tax Officer either—

(*a*) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or

(*b*) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(4) For the purposes of this section, an "associated operation" means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets.

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in Cochin if—

(*a*) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person, or

(*b*) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or

(*c*) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income

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or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which represent that income, or

(*d*) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(*e*) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income.

(6) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(7) For the purposes of this section—

(*a*) the expression "assets" includes property or rights of any kind, and the expression "transfer" in relation to rights includes the creation of those rights;

(*b*) the expression "benefit" includes a payment of any kind;

(*c*) references to income of a person not resident or of a person not ordinarily resident in Cochin shall, where the amount of the income of a company for any year

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or period has been deemed to have been distributed under sub-section (1) of section 29, include references to so much of the income of the company for that year or period as is equal to the amount deemed to have been distributed to that person;

(*d*) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(*e*) any body corporate incorporated outside Cochin shall be treated as if it were resident out of Cochin whether it is so resident or not.

(8) The provisions of this section shall apply for the purposes of assessment to income-tax and super-tax for the year ending on the last day of Karkadagam 1118, and subsequent years, and shall apply, in relation to transfers of assets and associated operations whether carried out before or after the commencement of this Act.

Avoidance of tax by certain transactions in securities

59. (1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as "the owner") agrees to sell or transfer those securities, and by the same or any collateral agreement—

(*a*) agrees to buy back or re-acquire the securities, or

(*b*) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable

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otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person.

(2) The references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(3) Where any person carrying on a business which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(*a*) agrees to sell back or re-transfer the securities, or

(*b*) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(4) Sub-section (3) shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(5) For the purpose of this section—

(*a*) the expression "interest" includes a dividend;

(*b*) the expression "securities" includes stocks and shares;

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(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(6) The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities; and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

Avoidance of tax by sales *cum* dividend.

60. (1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant

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year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transctions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be deemed to be securities to which sub-section (3) applies.

(3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued:

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of section 59 have been applied in his case in respect of such income.

(4) If any person fails to furnish any statement or particulars required under this section,

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or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the purposes of income-tax or super-tax.

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

(6) For the purpose of this section the expression "securities" includes stocks and shares.

CHAPTER VIII

RECOVERY OF TAX AND PENALTIES

Tax when payable.

61. Any amount specified as payable in a notice of demand under sub-section (3) of section 29 or under section 39 or an order under section 41 or section 42 or section 43, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default:

Provided that, when an assessee has presented an appeal under section 40, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

Mode and time of recovery.

62. (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum

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not exceeding that amount shall be recovered from the assessee by way of penalty.

(2) For the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(3) The Income-tax Officer may forward to the Diwan Peishkar a certificate under his signature specifying the amount of arrears due from an assessee, and the Diwan Peishkar, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

Provided that without prejudice to any other powers of the Diwan Peishkar in this behalf he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1111, a Civil Court has in respect of the attachment and sale of debts due to a Judgment-debtor for the purpose of the recovery of an amount due under a decree.

(4) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Government or as the Government directs.

(5) The Government may direct with respect to any special area that income-tax shall be recovered therein with, and as an addition

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to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

(6) Save in accordance with the provision of sub-section (1) of section 52, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act.

Recovery of penalties.

63. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 33, section 38, sub-section (6) of section 59, sub-section (5) of section 60 or sub-section (1) of section 62, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

CHAPTER IX

REFUNDS

Refunds.

64. (1) If any individual, Hindu undivided family, undivided *Marumakkathayam tarawad*, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess.

(2) The Deputy Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

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(3) Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.

(4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of this Act, which he would not be entitled to claim but for the passing of this Act.

Relief in respect of United Kingdom Income-tax.

65. (1) If any person who has paid by deduction under section 21 or otherwise Cochin Income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid by deduction or otherwise United Kingdom income-tax for the corresponding year in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920 (10 & 11 Geo. 5 c. 18), is less than the Cochin rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Cochin rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section:

Provided that in no case shall the rate at which such refund is calculated exceed half the

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Cochin rate of tax appropriate to the income of the person entitled to relief.

(2) In sub-section (1)—

(*a*) the expression "Cochin income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(*b*) the expression "Cochin rate of tax" means the amount of Cochin income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Cochin super-tax before deduction of any relief due to the claimant under this section divided by his total income;

(*c*) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts;

(*d*) the expression "appropriate rate of United Kingdom income-tax" has the meaning assigned to that expression in section 27 of the Finance Act, 1920 (10 & 11 Geo. 5 c. 18), as amended by the Finance Act, 1927.

Relief in respect of Indian State and Dominion Income-tax.

66. (1) The Government may, by notification in the Government Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax

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(including super-tax) under this Act and Dominion income-tax.

(2) For the purposes of this section "Dominion income-tax" means any income-tax or super-tax charged under any law in force in any other Indian State or in any part of His Majesty's Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in Cochin which appears to the Government to correspond to the relief which may be granted by this section.

Payment of income-tax by company to be deemed payment by shareholder.

67. Where a shareholder has received a dividend from a company which has paid income-tax imposed in Cochin or elsewhere, he shall be deemed, in respect of such dividend, himself to have paid the income-tax (exclusive of super-tax) paid by the company on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company has paid such income-tax bears to the whole income of the company.

Relief granted to a company to be deemed relief granted to share-holder.

68. (1) Where a shareholder has received a dividend from a company which has obtained the relief referred to in section 65 or granted under section 66, he shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted in respect of income-tax only to the company for the financial year preceding the year in which the dividend was paid.

(2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 28 or section 44 or by setting it off against any relief due to him under section 64.

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69. If any person who is a subject of Cochin and has paid by deduction or otherwise Cochin income-tax for any year in respect of any income arising without Cochin in a country the laws of which do not provide for any relief in respect of income-tax charged in Cochin proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Cochin income-tax payable of a sum equal to one-half of such Cochin income-tax or to one-half of such tax payable in the said country, whichever is the less.

Relief in respect of tax charged in country not providing for relief in respect of Cochin Income-tax.

70. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Deputy Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

Power to set off amount of refunds against tax remaining payable.

71. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause, have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 64 or 65, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Power of representative of deceased person or person disabled to make claim on his behalf.

72. No claim to any refund of income-tax or super-tax under this Chapter shall be allowed, unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into Cochin :

Limitation of claims for refund.

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of this Act, the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (15) of section 3 in which the

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income arose on which the tax was recovered, whichever period may expire later:

Provided further that a claim to refund under section 65 of tax paid prior to the commencement of this Act, may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or the Deputy Commissioner of Income-tax specially empowered in this behalf by the Government that he had sufficient cause for not making the claim within such period.

CHAPTER X

OFFENCES AND PENALTIES

Failure to make payments or deliver returns or statements or allow inspection.

73. If a person fails without reasonable cause or excuse—

(*a*) to deduct and pay any tax as required by section 21 or under sub-section (4) of section 62;

(*b*) to furnish a certificate required by sub-section (15) of section 21 or by section 24 to be furnished;

(*c*) to furnish in due time any of the returns mentioned in section 23, section 25, section 26, sub-section (2) of section 27, or section 48;

(*d*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 27, such accounts and documents as are referred to in the notice;

(*e*) to grant inspection or allow copies to be taken in accordance with the provisions of section 49;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

False statement in declaration.

74. If a person makes a statement in a verification mentioned in section 23 or section 25 or section 26 or

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section 27 or sub-section (2) of section 36 or sub-section (3) of section 40, or sub-section (2) of section 42, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Prosecution to be at instance of Deputy Commissioner.

75. (1) A person shall not be proceeded against for an offence under section 73 or section 74 except at the instance of the Deputy Commissioner.

(2) The Deputy Commissioner may either before or after the institution of proceedings compound any such offence.

Disclosure of information by a public servant.

76 (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, as made applicable to Cochin, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to the disclosure—

(*a*) of any such particulars for the purposes of a prosecution under

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the Cochin Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(*b*) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(*c*) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(*d*) of any such particulars to a Civil Court in any suit to which the Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(*e*) of any such particulars to any officer appointed by the Comptroller of Finance and Accounts or the Government to audit income-tax receipts or refunds, or

(*f*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any person appointed by the Government to hold such inquiry, or

(*g*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Cochin Stamp Act, 1083, to impound an insufficiently stamped document, or

(*h*) of such facts, to an authorised officer of the United Kingdom

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or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with Cochin for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 65 of this Act to be given, or

(*i*) of such facts, to any authority exercising powers under the Sea Customs Act, 1109 or any Act of the Cochin Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(*j*) of such facts, to a Returning Officer, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(*k*) so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established.

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 34 or section 36, or to the giving of evidence by a public servant in respect thereof.

(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

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CHAPTER XI

SUPER-TAX

Charge of super-tax.

77. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, undivided *Marumakkathayam tarawad*, company, local authority, unregistered firm or other association of persons, not being a registered firm, or the partners of the firm or members of the association individually, an additional duty of income-tax (in this Act referred to as super-tax) at the rates or rates as may be fixed by Act of the Legislature:

Provided that where under the provisions of clause (*b*) of sub-section (5) of section 28 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself:

Provided further that, where the profits and gains of an unregistered firm or other association of persons not being a company have been assessed to super-tax, super-tax shall not be payable by a partner of the firm or a member of the association, as the case may be, in respect of the amount of such profits and gains which is proportionate to his share.

Total income for purposes of super-tax.

78. Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, undivided *Marumakkathayam tarawad*, company, local authority, unregistered firm or other association of persons shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

Application of Act to super-tax.

79. (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 4, the second proviso to sub-section (1) of section 10, the second proviso to section 11, sub-section (2) of section 17, and

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sections 18, 22 and 24 and the first proviso to sub-section (1) of section 51 and section 85 and sub-section (2) of section 86 shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

(2) Save as provided in sub-sections (1), (2), (3), (6), (7), (8) and (9) of section 21 and section 87 super-tax shall be payable by the assessee direct.

CHAPTER XII

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS

Definitions.

80. In this Chapter, unless there is anything repugnant in the subject or context,—

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(*b*) an "employer" means—

(*i*) a Hindu undivided family, undivided *Marumakkathayam tarawad*, company, firm or other association of persons, or

(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 13,

maintaining a provident fund for the benefit of his or its employees;

(*c*) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*d*) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an

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employee, but does not include any sum credited as interest;

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time;

(*f*) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;

(*g*) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; and

(*h*) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund.

The according and withdrawal of recognition.

81. (1) The Commissioner of Income-tax may accord recognition to any provident fund which in his opinion, satisfies the conditions prescribed in section 82 and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Government may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(3) An order withdrawing recognition shall take effect from the day on which it is made.

(4) An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund may appeal, within sixty days of such order, to the Government.

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The appeal shall be in the form and shall be verified in the manner prescribed by the Government.

Conditions to be satisfied by a recognised Provident fund.

82. (1) In order that a provident fund may receive and retain recognition it shall satisfy the conditions set out below and any other conditions which the Government may, by rule, prescribe—

(*a*) All employees shall be employed in Cochin or shall be employed by an employer whose principal place of business is in Cochin.

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

(*c*) Subject to the provisions of section 83, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such

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contributions, and accumulations, and of securities purchased therewith, and of no other sums.

(*e*) The fund shall be vested in two or more trustees under a trust which shall not be revocable save with the consent of all the beneficiaries.

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

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(*h*) Save as provided in clause (*g*), or in accordance with such conditions and restrictions as the Government may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

Power to relax restrictions of employer's contributions in certain cases.

83. Subject to any rules which the Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 82—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

Annual accretion deemed to be income received.

84. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 85, shall be liable to income-tax and super-tax:

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Provided that, for the purpose of sub-section (3) of section 18, out of such annual accretion only the employee's own contributions shall be included in his total income.

Exemption of annual accretion from income-tax.

85. (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year or six thousand rupees, whichever is less.

(2) Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and in so far as it is allowed at a rate not exceeding such rate as the Government may, by notification in the Cochin Government Gazette, fix in this behalf.

Exemption of accumulated balance from income-tax and super-tax.

86. (1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax.

(2) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and shall be excluded from the computation of his total income:

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business,

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or other cause beyond the control of the employee.

(3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2), the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

Deduction at source of income-tax payable on accumulated balances due.

87. The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (3) of section 86 and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 89, and sub-sections (10) to (15) of section 21 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries".

Accounts of recognised provident funds.

88. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Government may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Government may prescribe.

Treatment of balances in newly recognised provident funds.

89. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes

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effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Government may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Government may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance :

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Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (*h*) of sub-section (1) of section 82, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

Treatment of fund transferred by employer to trustee.

90. (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the

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employer within the meaning of clause (xii) of sub-section (2) of section 13, incurred in the year in which the accumulated balance due to the employee is paid.

Provisions relating to rules.

91. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 102.

(2) In addition to any power conferred by this Chapter, the Government may make rules—

(*a*) prescribing the statements and other information to be submitted with an application for recognition;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are share-holders in the company;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(*e*) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

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92. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1111, applies. **Application of this Chapter.**

CHAPTER XIII

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUNDS

93. In this Chapter, unless there is anything repugnant in the subject or context,— **Definitions.**

(*a*) "approved superannuation fund" means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Government in accordance with the provisions of this Chapter;

(*b*) "employer", "employee" and "contribution" have, in relation to superannuation funds, the meanings assigned to those expressions in section 80 in relation to provident funds;

(*c*) "ordinary annual contribution" means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

94. (1) The Government may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 95, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval. **Approval and withdrawal of approval.**

(2) The Government shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Government shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such

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withdrawal and the date on which the withdrawal is to take effect.

(4) The Government shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

Conditions for approval,

95. In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied, namely.—

(*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in Cochin;

(*b*) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons; and

(*c*) the employer in the trade or undertaking shall be a contributor to the fund:

Provided that the Government may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund.—

(*i*) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(*ii*) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or

(*iii*) notwithstanding that the trade or undertaking in connection with which the fund is established is

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carried on only partly in Cochin.

96. (1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Government may require such further information to be supplied as it thinks proper. **Application for approval.**

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Government otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

97. Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 18 apply: **Exemption of superannuation fund from income-tax.**

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution:

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Government may direct, either as an expense incurred in the year

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in which the sum is paid, or as an expense to be spread over such period of years as the Government thinks proper.

Treatment of repaid contributions.

98. (1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax and super-tax to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax and super-tax during the preceding three years or during such period, if, less than three years, as he was a member of the fund and shall be paid by the trustees to the credit of the Government within prescribed time and in such manner as the Government may direct.

Deduction from pay of, and contributions on behalf of, employee to be included in return under section 26.

99. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 26.

Liabilities of trustees on cessation of approval of fund.

100. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(*a*) on account of returned contributions (including interest on contributions, if any), and

(*b*) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

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101. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax officer, within twenty-one days of the date of such notice— **Particulars to be furnished in respect of superannuation funds**

(*a*) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require;

(*b*) prepare and deliver to the Income-tax Officer a return containing—

(*i*) the name and place of residence of every person in receipt of an annuity from the fund;

(*ii*) the amount of the annuity payable to each annuitant;

(*iii*) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees; and

(*iv*) particulars of sums paid in commutation or in lieu of annuities;

(*c*) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Government may reasonably require.

CHAPTER XIV

MISCELLANEOUS

102. (1) The Government may, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of Cochin or for such part thereof as may be specified. **Power to make rules.**

(2) Without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the manner in which, and the procedure by which, the

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income, profits and gains shall be arrived at in the case of—

(*i*) incomes derived in part from agriculture and in part from business;

(*ii*) persons residing out of Cochin;

(*b*) prescribe the procedure to be followed on applications for refunds;

(*c*) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, (10 & 11 Geo. 5c. 18) or under section 65 of this Act;

(*d*) prescribe the year which, for the purpose of relief under section 65, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920 (10 & 11 Geo. 5c. 18); and

(*e*) provide for any matter which by this Act is to be prescribed.

(3) In cases coming under clause (*a*) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Government is unreasonable, the rules made under that sub-section may—

(*a*) prescribe methods by which an estimate of such income, profits and gains may be made, and

(*b*) in cases coming under sub-clause (*i*) of clause (*a*) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax;

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and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the Cochin Government Gazette, and shall thereupon have effect as if enacted in this Act.

Power to make exemptions, etc.

103. (1) The Government may, by notification in the Government Gazette, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months, or a payment which is under the provisions of sub-section (1) of section 10 a profit in lieu of salary his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Government may grant the appropriate relief.

Appearance by authorised representative.

104. (1) Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 47 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant, and not being disqualified by or under sub-section (3).

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(2) In this section,—

(*i*) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings;

(*ii*) "lawyer" means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in Cochin:

(*iii*) "accountant" means a registered accountant enrolled in the Register of Public Accountants maintained by the Diwan under the Auditors Certificate Rules, 1111, or a member of an association of accountants recognised in this behalf by the Government.

(3) No person who has been dismissed from Government service after the 1st day of Chingam, 1117, shall be qualified to represent an assessee under sub-section (1); and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

(*a*) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,

(*b*) any person against whom such direction is made may, within one month of the making of the

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direction, appeal to the Government to have the direction cancelled, and

(c) no such direction shall take effect until one month from the making thereof or when an appeal is preferred, until the disposal of the appeal.

Receipts to be given.

105. A receipt shall be given for any money paid or recovered under this Act.

Service of notices.

106. (1) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1111.

(2) Any such notice or requisition may in the case of a firm or a Hindu undivided family, or an undivided *Marumakkathayam tarawad*, be addressed to any member of the firm or to the manager, or any adult male member of the family or *tarawad*, and, in the case of any other association of persons be addressed to the principal officer thereof.

Place of assessment.

107. (1) Where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner:

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Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views:

Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of section 27 and has stated therein the principal place wherein he carries on his business, profession or vocation, or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of section 27 or under section 44 for the making of a return:

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made.

(4) Notwithstanding anything contained in this section, evey Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

Indemnity.

108. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Statement of case by Commissioner to High Court.

109. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter X, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

(2) Within sixty days of the date on which he is served with notice of an order under section

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41 or section 42, or of an order under section 43 enhancing an asssessment or otherwise prejudicial to him, the assessee in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order, and the Commissioner shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:

Provided that a reference shall lie from an order under section 43 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 41, revised by the order under section 43:

Provided further that, if, in exercise of his power of revision under section 43, the Commissioner decides the question, or if the Commissioner rejects the application on the ground that it is time-barred or otherwise incompetent, or if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case, the assessee may within thirty days from the date on which he receives notice of the order passed by the Commissioner withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may within six months from the date on which he is served with notice of the refusal apply to the High Court, and the High Court, if

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it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it; and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

(4) If, on any application being made under sub-section (2), the Commissioner rejects it on the ground that it is time-barred, the assessee may, within two months from the date on which he is served with notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub-section (2).

(5) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(6) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward

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a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(7) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(8) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case.

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

(9) Section 5 of the Cochin Limitation Act, 1112, shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (4).

References to be heard by Benches of High Court.

110. (1) When any case has been referred to the High Court under section 109, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 83 of the Code of Civil Procedure 1111, shall, so far as may be, apply.

Bar of suits in Civil Court.

111. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Officer of the Government for anything in good faith done or intended to be done under this Act.

Computation of periods of limitation.

112. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 109 the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

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SCHEDULE I

[*See section 13(7)*]

Rules for the Computation of the Profits and Gains of Insurance Business

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. The profits and gains of life insurance business shall be taken to be either—

(*a*) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(*b*) the annual average of the surplus disclosed by the actuarial valuation made for the last intervaluation period ending before the year for which the assessment is to be made, after adjusting such surplus so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 13 of this Act be allowed for in computing the profits and gains of a business,

whichever is the greater:

Provided that the amount to be allowed as management expenses shall not exceed—

(*a*) 7½ per cent of the premiums received during the preceding year in respect of single premium life insurance policies, *plus*

(*b*) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums received is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year 7½ per cent. of such first year's premiums received during the preceding year, *plus*

(*c*) 85 per cent. of the first year's premiums received during the preceding year in respect of other life insurance policies and 8½ per cent. of other premiums received during that year in respect of all life insurance policies other than single premium life insurance policies.

3. In computing the surplus for the purpose of rule 2—

(*a*) one-half of the amounts paid to or reserved for or expended on behalf of policy-holder shall be allowed as a deduction:

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous inter-valuation period:

Provided further that if any amount so reserved for policy-holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders one-half of such amount, if it has been previously allowed as a deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved;

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(*b*) any amount either written off or reserved in the accounts or through the actuarial valuation balance-sheet to meet depreciation of or loss on the realisation of securities or other assets, shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance-sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus:

Provided that if upon investigation it appears to the Income-tax Officer that having due regard to the necessity for making reasonable provision for bonuses to participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in the surplus in respect of appreciation of such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just;

(*c*) the whole amount of interest received in respect of any securities of the Government which have been issued or declared to be income-tax free shall be deducted.

4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (11) of section 21 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

5. For the purposes of these rules—

(*i*) "preceding year" means the previous year as defined in section 3 of this Act;

(*ii*) "gross external incomings" means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund) and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of securities:

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 13 would have been assessable under section 12 shall be computed upon the basis laid down in the last-named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section.

(*iii*) "management expenses" means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on

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the realisation of, securities and any expenditure other than expenditure which may under the provisions of section 13 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules;

(*iv*) "life insurance business" includes annuity business, that is to say, the business of effecting contracts of insurance for the granting of annuities on human life and, if so provided in the contract of insurance, disability and double or triple indemnity accident benefits;

(*v*) "securities" includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 13 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments, and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing society or assessment business shall be taken to be 15 per cent. of the premium income of the previous year, or in the case of non-resident companies 15 per cent. of the Cochin premium income of the previous year.

8. The profits and gains of the Cochin branches of an insurance company not resident in Cochin, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its Cochin premium income bears to its total premium income. For the purpose of this rule the total world income of life insurance companies not resident in Cochin whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in Cochin.

9. These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance company.

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